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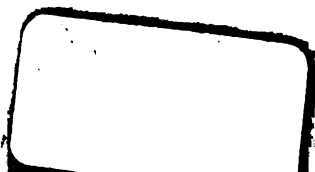
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JOHNS HOPKINS UNIVERSITY STUDIES  
IN  
HISTORICAL AND POLITICAL SCIENCE  
H. B. ADAMS, Editor.

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History is past Politics and Politics are present History.—*Freeman*

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VOLUME XIX

DIPLOMATIC AND  
CONSTITUTIONAL HISTORY

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AMERICAN RELATIONS  
IN THE  
PACIFIC AND THE FAR EAST  
1784-1900

"The story of America in the Pacific grandly deserves a volume. . . . For over a century we have had an army of pioneers who scarcely dreamed of the magnitude of the movement they were leading."—*Wm. E. Griffis*.

"No one can behold the silent and persevering efforts of our countrymen in the Pacific without a feeling of pride and exultation."—*R. J. Cleveland, 1843*.

"To every lover of his country, as well as to those more immediately concerned in commerce, it must be a pleasing reflection, that a communication is thus happily opened between us and the eastern extremity of the globe."—*Samuel Shaw, 1785*.

"On the whole, it must be a satisfactory consideration to every American, that his country can carry on its commerce with China under advantages, if not in many respects superior, yet in all cases equal, to those possessed by other people."—*Ibid., 1787*.

"The future history of the world must be achieved in the East."—*W. H. Trescot, 1840*.

"Who does not see then, that every year hereafter, European commerce, European politics, European thought and European activity, although actually gaining force, and European connections although actually becoming more intimate, will, nevertheless, sink in importance; while the Pacific ocean, its shores, its islands and the vast region beyond will become the chief theatre of events in the world's great hereafter."—*Senator Seward, 1852*.

"Expansion seems to be recognized, not by the difficulties of resistance, but by the moderation which results from our own internal constitution. . . . Commerce has brought the ancient continents near to us, and created necessities for new positions—perhaps connections or colonies there—and, with the trade and friendship of the elder nations, their conflicts and collisions are brought to our doors and to our hearts. . . . Even prudence will soon be required to decide whether distant regions, either east or west, shall come under our protection, or be left to aggrandize a rapidly spreading and hostile domain of despotism."—*W. H. Seward, 1852*.

**SERIES XIX**

**Nos. 1-3**

**JOHNS HOPKINS UNIVERSITY STUDIES**  
**IN**  
**HISTORICAL AND POLITICAL SCIENCE**  
**HERBERT B. ADAMS, Editor**

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*History is past Politics and Politics are present History.—Freeman*

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**AMERICAN RELATIONS**  
**IN THE**  
**PACIFIC AND THE FAR EAST**  
**1784-1900**

**By JAMES MORTON CALLAHAN, Ph. D.**

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## PREFACE

The following chapters on the origin and evolution of American enterprise and policy in the Pacific and the Far East are the outgrowth of a course of lectures delivered by the author in 1899-1900, before graduate students in the department of history and politics of the Johns Hopkins University.

Lectures treating of the relations of the United States with Alaska and Behring Sea, Transandinian America, and isthmian transit routes have been reserved for publication elsewhere.

For facilitating my investigations at Washington, D. C., my sincere acknowledgments are due to Mr. Andrew H. Allen, Chief of the Bureau of Rolls and Library of the Department of State, and Messrs. A. P. C. Griffin, Chief Bibliographer, and Hugh A. Morrison, of the Library of Congress. For encouragement in this and other fields of research, I am under obligation to Professor Herbert B. Adams, of Johns Hopkins University.

JAMES MORTON CALLAHAN.

*Johns Hopkins University,  
Jan. 1, 1901.*



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## INTRODUCTION.

The Pacific—the sea of Eastern legends—upon whose warm currents unwilling emigrants were carried to primeval America, and a place of interest and excitement which Europe long hoped to reach by some passage across the American continent,<sup>1</sup> for over a century has mirrored upon its waves the silent and persevering efforts of American

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<sup>1</sup> The Pacific was unknown to Europeans when Columbus sailed in search of the Indies in 1492, and when England sought a north-west passage in 1497. It was first seen by Balboa from an eminence on the Isthmus of Darien; and after the remarkable voyage of Magellan, in 1520, the "South Sea" became a place of interest and excitement. England, through the influence of her daring buccaneers who appeared on the scene, friends to the sea, but foes to all on its waves, soon rose like a sleeping leviathan to rule the deep. The Cape of Good Hope route to the Indies was found to be better than that by Cape Horn, but the idea of cutting a canal through the Isthmus was early suggested, and the hope of a western passage to the Indies did not finally die out for many years. The English, in the days of Gilbert, had visions of reaching the Pacific by the St. Lawrence, and the early settlers of Jamestown sailed up the Chickahominy with the same thought. Fictitious ideas of wealth to be obtained in the South Pacific resulted in the "South Sea Bubble" and were soon afterwards dispelled by voyages of Wallis, Carteret and later explorers. While the conflict with her American colonies was in progress, England was putting forth efforts to control the commerce of the Northwest coast. In 1776, Captain James Cook was sent to explore the coast and, after discovering the Sandwich Islands, landed at Nootka sound in 1778. He then sailed through Behring Straits, and returned to the Sandwich Islands. All previous voyagers had sailed along the coast of South America to Panama or California, and then across the Pacific to the south of the Sandwich Islands. Cook did not confine himself to former tracks, but made accurate surveys of his own route for the use of subsequent voyagers. Besides the Sandwich Islands he visited the Friendly and Society islands, and New Zealand. He wrote of his discoveries along luxuriant isles and picturesque shores where perfumes were borne on every breeze, and Vancouver and many other explorers followed.

citizens who, trained in the school of hardships, seeking new fields of daring adventure, romance or maritime enterprise, were the pioneers in discovering safe paths and harbors, and in obtaining commercial knowledge of the Pacific, which led the way for American influence in the Far East.

Its waters were navigated by American trading vessels soon after the Revolution. In 1784, the *Empress of China*, fitted out at New York, reached Canton laden with ginseng. Other vessels were soon fitted out in Boston, to engage in trade between China and the Northwest coast—in which Jefferson showed a lively interest. The number of vessels engaged in trade, or in pursuing the sperm whale, soon increased rapidly. Though the danger from French privateers in 1778, the seizures by Spanish authorities at Valparaiso in 1800, the embargo of 1807, the acts of Peruvian corsairs before 1813,<sup>1</sup> and the effects of the War of 1812,<sup>2</sup> were depressing in their effects on enterprise, after 1815 American commerce and fisheries in the Pacific were renewed with vigor and continued to increase.

During the Spanish-American revolution, the influence of American sailors played no unimportant part along the coasts west of the Andes. Even at that early date, a United States consul at Manila, under instructions from Monroe, was studying the conditions in the Philippines, and reporting on the prospects for American trade there. In mid-ocean, the natives were gradually introduced to the virtues of a higher civilization, whose vices, also, they often saw.

As commerce with the islands and the Far East in-

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<sup>1</sup> In April, 1813, J. R. Poinsett, sent to remonstrate against the acts of the Peruvian corsairs, directed the Chilean army in a successful attack upon the Limian forces.

<sup>2</sup> During the War of 1812 many American whalers in the Pacific were captured and burned or turned into British transports. The island of Nantucket alone lost twenty-seven ships. Captain David Porter, entering the Pacific to protect American interests, destroyed a number of British whalers, and occupied Madison Island as a United States naval and supply station, but was finally defeated by the British near the harbor of Valparaiso.

creased,' the necessity of some national protection and supervision' induced the American government, after 1825, to keep a naval squadron in the Pacific." It was the interest of the entire nation to preserve friendly relations with the islands, prevent the evils growing out of desertions and mutinies, investigate the irregular conduct of libertines who were so far removed from the arms of the civil law, and make surveys and charts that would lessen the dangers of shipwreck.' In 1831 the *Potomac* was sent to the coast of distant Sumatra to retaliate upon the natives of Quallah Battoo for their outrageous seizure of an American trading vessel. For the purpose of protecting and extending commerce with the East, Edmund Roberts, a sea-captain, was sent in 1832 to negotiate treaties and obtain safe ports. After much discussion and delay the United States Exploring Expedition, projected by J. N. Reynolds and others, was organized under Captain Wilkes, and from 1839 to 1841 examined many parts of the Pacific, sailing far toward the south polar regions and northward to the Sandwich Islands and Oregon.

By the settlement of Oregon and the acquisition of California, the United States became almost a neighbor to Russia, Japan and China, and an arbiter in the affairs of the Pacific, the sea of great and increasing activity. With her keels plowing the waves of the Polynesian world, and the western waters of the Pacific, she soon renewed her efforts to open the gates of the stubbornly exclusive Orient to the commerce of the West, increased her interest in the Sand-

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'By 1829 there were about 100 United States vessels calling at the Hawaiian Islands in a period of 12 months, with a tonnage of 3500 and valued at \$5,000,000.

'Benjamin Rodman, of New Bedford, writing J. N. Reynolds, June 11, 1836, suggested that a superintending influence over "our marine colonies" was just as important as the establishment of governments and law in our territories.

'During the South American revolt the United States had kept a small squadron on the west coast of Chile and Peru.

'The log-books of American whalers were a valuable source of information.

wich Islands where conditions after 1850 were preparing the way for a voluntary offer of annexation, took steps to protect American rights to the Guano Islands, contemplated the establishment of distant naval and coaling stations, conducted explorations along the eastern coasts of Asia and in the Northern Pacific, and threatened to bombard the delinquent Fijis.

The Pacific felt the thrill of awakening life, and gradually our back gardens beyond the Cordilleras became front terraces. In 1867 a regular line of steamer service was established between San Francisco and the Asia coast. Soon afterward, Seward, who had watched the growing importance of "the historic sea of the future," purchased Alaska and the Aleutian Islands and brought us within 45 miles of Russia and 700 miles of Japan.

The policy of acquiring distant islands naturally evolved with the course of events. The determination to allow no territorial control which would cut Hawaii adrift from the American system developed into the policy of annexation. The desire to hold a naval station at Pango Pango, led to participation, first, in a tripartite international convention for the neutrality and government of the Samoan Islands, and finally, in an agreement for partition. The logic of history and the exigencies and incidents of the humanitarian war of intervention to end Spanish misrule in Cuba, increasing American opportunity, duty and responsibility, resulted in the acquisition of the Philippines and other islands.

The United States has now become a leading power in international politics, with increased means for the accomplishment of her beneficent mission in the Pacific and the Far East.

## CHAPTER I.

### PIONEERS IN TRADE AND DISCOVERY.

#### EARLY COMMERCIAL ENTERPRISES BETWEEN THE AMERICAN COAST AND CHINA.

Maritime enterprise was one of the earliest characteristics of the American people. The colonists soon had many trading vessels. The early settlers, becoming accustomed to work, privations and frugal habits, were led to daring enterprise and determination to secure wealth. The spirit of our fathers on the waves among the fisheries was one cause of the envy that resulted in wars between England and France and America. In 1775 Burke said there was no climate that was not witness to their toil, and no sea but what was vexed by their fisheries "among the tumbling mountains of ice . . . beneath the Arctic circle, into the opposite region of the polar cold, on the coast of Africa, and along the coasts of Brazil." In the school of hardships, the Americans had even become able to capture the vessels of the British during the Revolution. American privateers, by prolonging the conflict on the waves, made success possible.

No sooner had the war closed than American merchants, seeking to be among the first to engage in direct trade with the Far East, fitted out vessels to sail the Pacific.<sup>1</sup> The American flag first appeared at Canton, China, during the "Canton War," in 1784, upon the *Empress of China*, which,

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<sup>1</sup> There had been an early American trade with China, via British vessels, tea being received in return for ginseng, which was purchased from New England Indians who received their pay in money, calico and trinkets.

having been fitted out for the China trade by Daniel Parker & Co., sailed from New York via Strait of Sunda, in February of that year, laden with ginseng.<sup>3</sup> Samuel Shaw, the supercargo of the *Empress*, was appointed consul to Canton in 1786. At that time, John Ledyard, of Connecticut, who had accompanied Captain Cook around the world, and now desired to engage in trade with the Northwest coast and Canton,<sup>4</sup> was at Paris talking with Jefferson, at whose suggestion he undertook to go, via Russia, Siberia and Kamschatka, to explore the western part of America.<sup>5</sup>

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<sup>3</sup> Diplomatic Correspondence of the U. S., 1783-89, vol. vii. Samuel Shaw to John Jay, May 19, 1785.

Major Shaw wrote a full account of his relations with China and Batavia. [Josiah Quincy: Journals of Major Samuel Shaw... with a life of the author. Boston, 1847. 360 pp.] Soon after reaching China on his first voyage, he had occasion to cooperate with the British, who had so recently been our enemies in war. A British gunner, while firing a salute, killed a Chinaman. The Chinese officials asked the delivery of the gunner, and, failing in their demand, they finally seized Mr. Smith, the supercargo of the British vessel. The Europeans unanimously agreed to make common cause, and the Americans joined. Shaw, at the request of the British, ordered his vessel to Canton to help enforce the demand for the release of the supercargo, and was the last to leave. The British submitted, however, and agreed to deliver the gunner. The harmony maintained between the Americans and the British was particularly noticeable by the French, who had been our recent allies. After his return to New York in May, 1785, Shaw wrote John Jay, the United States Minister for Foreign Affairs, an account of his voyage. He soon received a reply which stated that Congress felt "a peculiar satisfaction in the successful issue of the first effort of the citizens of America to establish direct trade with China." After he returned to Canton, in January, 1787, as the first American consul to China, he wrote Jay a long letter in which he said: "On the whole, it must be a satisfactory consideration to every American, that his country can carry on its commerce with China under advantages, if not in many respects superior, yet in all cases equal, to those possessed by other people."

<sup>4</sup> Jared Sparks: Life of John Ledyard. Jefferson's Works, vol. i, p. 68.

<sup>5</sup> On returning to America in 1782, he had induced Robert Morris to take an active interest in the northwest trade, and to begin to fit out a vessel, but Morris finally abandoned the enterprise on account of pecuniary embarrassments.

Failing to receive the permission of the Empress of Russia, but still hoping to be "the first circumambulator of the earth," with "only two shirts and yet more shirts than shillings," he continued his journey eastward over Siberia until he was arrested when within 200 miles of Kamschatka. Jefferson already saw the commercial and political significance of the region, and had received impressions which later led to the expedition of Lewis and Clarke, who were sent to determine whether the Missouri and Columbia rivers would afford a practicable route to the Pacific.

In 1787, the *Canton* (Capt. Thos. Truxton), the old *Alliance* (Capt. John Reed), and no less than three other vessels were engaged in the China trade. In the same year, shrewd New England merchants, seeking new fields of commerce between the Northwest coast and Canton, also sent the *Columbia* (Captain Kendrick) and the sloop *Lady Washington* (Captain Gray) to the vacant lands south of the Straits of Fuca to trade, explore, buy lands of the natives and build stores and forts. The captains were provided with sea letters issued by the United States Government, passports by Massachusetts, and letters of recommendation from the Spanish plenipotentiary in the United States. The vessels became separated in a storm, after rounding Cape Horn (January, 1788). The *Washington* reached Nootka sound on September 17, 1788, a few days before the *Columbia*, and spent the winter there. In the following summer she sailed northward, and Gray saw islands which he named Washington Islands in honor of George Washington. They had already been called Prince Edward's Islands by the British, and are now known as the Charlotte group. Captain Kendrick afterward took command of the *Washington* to sail with Captain William Douglas, of the *Grace*.\*

The *Columbia*, by her appearance in the Pacific, "agitated

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\* Joseph Ingraham: *Journal of the Voyage of the Brigantine Hope*, from Boston to the Northwest coast of America. 4 vols., in MS. at Dept. of State.

half of the Spanish dominion in America." \* In May, 1788, she entered the harbor of the island of Juan Fernandez for repairs. Ambrose O'Higgins, the Captain-General of Chile, arrested and cashiered the Spanish commandant who gave the vessel friendly treatment. Lacroix, the viceroy of Peru, sent a ship from Callao in pursuit, and requested the authorities on the coasts of Chile, Peru and Mexico, to seize any foreign vessel which should appear. Notwithstanding the alertness of the Spanish officials toward the south, the American vessels were not disturbed by the Spanish authorities at Nootka.

The *Columbia*, after remaining at Nootka until October, 1789, carried furs to Canton, exchanged them for teas, completed the circumnavigation of the earth, and in August, 1790, her return was celebrated at Boston with much enthusiasm. † Captain Ingraham, the mate, brought with him from the Sandwich Islands a native crown prince, Opye, who became the centre of interest, and whose visit was the beginning of our friendship with Hawaii.

Other American vessels had recently stopped at the Sandwich Islands, and had not been favorably impressed with the character of the natives. ‡ In the latter part of 1789 the *Eleanor*, an American armed trading vessel, commanded by Captain Metcalf, of New York, stopped *en*

\* Since the royal ordinance of 1692, every foreign vessel in those seas, without a license from Spain, had been treated as an enemy. The fur traders in the North Pacific excited the apprehensions of the Spanish Government.

† The *Columbia* was the first vessel to carry our flag around the world. In 1789 there were fifteen American vessels at Canton. The number largely increased in a decade. According to the Canton custom-house record, 20 ships and two brigs from the United States visited that port from June 11, 1800, to April 27, 1801. For the year ending June, 1802, there were 29 ships and 2 brigs. From June, 1802, to January 9, 1803, there were 31 ships and 1 schooner. [Pitkin: Statistical View, N. Y., 1817. p. 246, and Appendix No. 2.]

‡ The *Massachusetts*, built for China trade, had sailed for Canton on March 28, 1790. See Delano's "Voyages."

§ John White: Voyage to the South Sea, Boston, 1823.



route to China. Natives stole a small boat in order to get nails and iron, and Metcalf, a few days later, took revenge by firing into a crowd, who had come in canoes to trade, and killed many innocent persons." The *Fair American*, commanded by Metcalf, after having been detained at Nootka, arrived a few days later, and was captured by natives, who proceeded to kill all on board except Isaac Davis. The latter's life was saved by interposition of one Ridler, the carpenter's mate of the *Columbia*, who had remained at Hawaii. Davis and John Young, an Englishman, were detained, and finally became chiefs, and instructed natives in the use of firearms. The natives were preparing 26,000 canoes to attack Captain Metcalf's brig, a few miles away, while pretending to be trading, but the Americans on the island exaggerated the power of Metcalf's guns and obtained permission of the king to send a letter requesting the captain to depart, but not stating what had occurred. Six months later, Captain Douglas, in the schooner *Grace*, arrived, and sent a letter requesting the delivery of the whites that remained, but failed to get them. He left Young and James Cox in care of the king to oversee the collection of sandalwood for the China market."

From a financial standpoint the voyage of the *Columbia* was not a success, but the enterprising Bostonians were determined not to neglect the "infant and lucrative China trade." Among the first, after the return of the *Columbia*, to reembark for the Pacific was Captain Joseph Ingraham.

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"Ingraham's Journal, vol. ii, p. 70. Greenhow: History of Oregon and California (Boston, 1845), chap. x, p. 224.

"The sandalwood traffic soon became important, and was a valuable source of revenue for the Hawaiian chiefs. Kamehameha compelled the natives to go on long journeys to the interior in search for sandalwood trees, and to hew the wood and bring it to the coast where he exchanged it for guns and vessels, by means of which, he made himself master of his own and then the surrounding islands. The wood was carried to China by the traders who exchanged it for teas and silk. The supply in a few years became much decreased.

At the Department of State<sup>12</sup> are four interesting volumes of an illustrated manuscript journal in which he has given an account of his voyage and descriptions of the natives wherever he found them. On September 16, 1790, taking Oppe with him, he accepted the command of the brigantine *Hope*, bade an affecting farewell to his native shores," and again braved the perilous ocean, sailing via Cape Horn.

In April, 1791, he reached the Marquesas Islands, discovered by Spain in 1595, and anchored a mile and a half off the shore, where naked savages, men and women, came swimming and in canoes, bringing a pig and cocoanuts. Oppe went on shore to buy water, of which the natives soon brought a plentiful supply, likewise of wood, bananas, small pigs, etc., which they exchanged for small nails. They had little knowledge of iron, and showed much curiosity. They became so bold in climbing the sides of the vessel that it was found necessary to drive them away. They had, also, a propensity for stealing, but immediately returned articles when they were discovered. The females diverted the attention of the sentinels from the frying pans and cooking utensils, which they proceeded to appropriate. At night they drew off and gave the crew a partial rest from their intolerable noise; but at daylight they came again, "swimming like a torrent," and bringing more wood and water. About 60 canoes with 600 persons, some with horse-palm umbrellas, collected around the vessel. The male natives, not being allowed to come on board, for fear they would divert the crew from their work, became very troublesome. The young men, notwithstanding the efforts of the older ones to check them, swam under the bottom of the vessel, and, with long poles, broke the cabin windows, and one of them struck Ingraham with a stick of wood. They all

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<sup>12</sup> They probably came into the possession of the United States Government shortly before the settlement of the Oregon question.

<sup>13</sup> The *Hope* was soon followed by the *Columbia*, then the *Hancock*, the *Jefferson*—and also by the *Margaret*, of New York.

seemed sorry, however, when the boat was preparing to leave.

No observations were made on shore. Opye, the only one who landed, said the women crowded about him so thickly that in his efforts to pay attention to them he could see nothing else. The fact that many men were seen with only one eye indicated that peace did not reign supreme.

On April 19, 1791, Ingraham, near latitude  $8^{\circ} 7'$  South and longitude  $140^{\circ}$  West, unexpectedly found several islands not indicated on the charts of the Spaniards or of Cook. He named them Washington, Adams, Federal, Lincoln, Franklin, Hancock and Knox." He intended to go on shore, but finding no convenient place to anchor, he called together his men, and was greeted with cheers when he announced that the islands were newly discovered and belonged to the United States."

On May 20, Ingraham reached "Owhyhee" [Hawaii], where a hundred trading canoes soon brought plenty of hogs, pigs, fowls and potatoes. Proceeding to Mowee, where 200 canoes soon collected, he received on board Tianna and "Tommahammahan," who were at war with Titierce and Tio. Feeling that the natives desired an opportunity to make an attack, he refused to go nearer shore as requested by Tianna, who said it took the natives' breath to bring hogs so far. Leaving Opye, he went farther along the coast, and found three white men, recently left by an American vessel, who warned him that the natives would take the first opportunity to capture his vessel. After finding it necessary to fire upon some of the natives, he saw about "700 canoes and 20,000 fighting men" collecting around him, and taking the whites with him he retired. Pyamano, a son of Chief Titierce, remained on board, intending to go to America; but Ingraham, not desiring to

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"Captain Roberts, of Boston, in 1792, named some of them Adams, Jefferson, Hamilton and Madison.

"When Ingraham reached Macao he learned that the French had discovered four of the islands twenty days later.

carry away a great chief, nor wanting to give the natives more chance to lament that they had ever been discovered by civilization, and, probably influenced by the arrival of a canoe from the windward to announce a declaration of war, discharged him at the next trading place.

On June 1, the *Hope* sailed from the Sandwich Islands, and on June 29 reached Washington Islands on the Northwest coast (Prince Edward's or Charlotte's isles) where repairs were made, and water and wood obtained. On July 4, the crew killed a hog, dined on the shore, and drank to the President's health. Sailing farther to the north to "Port Ingraham," they were approached by women natives, who came in canoes singing and offering to sell their foul fish. Chief Cow agreed to have skins brought, and soon other tribes sought to trade in fur. After reaching  $54^{\circ} 21'$  N. and starting to return southward, the *Hope* met the *Columbia* July 23, on its second voyage.\* Going on board, Ingraham received letters from Boston, and learned from Captain Gray that the Spaniards had augmented their settlement at Nootka and established another in the Straits of Juan de Fuca. He was not willing to concede that Spain could claim the entire Northwest coast by right of discovery. Contemplating the recent disturbance between Spain and England, and the possibility of three other nations contending for the territory claimed by each of these powers, he was about to lay out the whole Northwest coast and assign to each his lot, but decided to leave the question for national assemblies to discuss when it should become a matter of more serious consequence.

After more trading with the natives toward the south of the Washington Islands (some of whom offered to go to "fight for more skins"), the *Hope*, on September 2, sailed away, and, on October 6, reached "Owhyhee," where Ingraham

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\* In June, 1791, the *Columbia* started on a second voyage under the command of Captain Gray, who discovered the mouth of the Columbia river, giving to the United States an advantage in the trade between China and the Northwest coast.

found the brig *Hancock*, of Boston, bound for Macao. While the natives were trading, the king's son again came on board with the desire to go to America. Starting on October 12, the *Hope* reached China on November 27. At Macao roads, Ingraham was informed by Captain R. D. Coolidge (who had formerly been on the *Washington*, but had become commander of the *Grace* after the death of Douglas) that China, on account of being at war with Russia, prohibited fur ships from entering the port of Canton, but he disposed of part of his furs there and left the others to be sold by Captain John Canning, of the *Nonsuch*. Two other American vessels arrived from the Northwest coast in the early part of December. One was the brig *Washington* (Captain John Kendrick), which had been in Nootka sound while Spain still held possession. The other was the *Snow Fairy* (Captain William Rogers), recently the property of Douglas.

Ingraham left Canton June 22, 1792, and in April sailed from Macao to Nootka, where, on July 2, he and Gray sent a joint letter to the Spanish commander. In November, after a twenty-two days' sail, he reached "Owhyhee," where his "Journal" suddenly ends.

The direct trade of the North Pacific between the American coasts and China soon grew in its importance, and remained almost entirely in the hands of Americans until 1814. After 1784, when the Northwest Company was organized at Montreal, the latter took the place of New York as the principal seat of the lake fur trade; but the Northwest and Hudson Bay companies became involved in disputes with each other, which resulted to the advantage of the Americans in the Pacific trade, which for twenty-five years was carried almost exclusively by vessels from Boston. It finally declined on account of the scarcity and high price of furs, caused by the competition of the Russians who advanced southward." The American vessels usually

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"R. J. Cleveland: Narrative of Voyages and Commercial Enterprises, 1792-1818. 2 vols. Cambridge, 1843.

started with valuable cargoes of West India productions and British manufactured articles—many with knives, iron, copper pans, and various trinkets for the natives—perhaps gathered a few seal skins or butts of oil in the South Pacific or obtained turtle at the Galapagos, sold a few articles at Valparaiso, bartered with the natives of the Northwest coast for furs, completed their cargo with sandalwood and other articles at the Sandwich Islands, and exchanged everything for teas, silks and nankins at Canton. On these voyages the Americans used the Sandwich Islands as a principal place of resort, but they also visited islands in all parts of the Pacific.<sup>18</sup> Their industry finally resulted in the settlement of Astoria and the colonization of Oregon, and contributed to the establishment of American influence along the western coast of South America, in the islands of the Pacific, and in the Far East.

The early occupation and enterprise of Americans in the Pacific was not limited to the trade between the Northwest coast, Hawaii and China. Many were engaged in whaling and sealing, and some in obtaining the pearl oyster and bêche-de-mer. In 1791 six ships from Nantucket, and one from New Bedford, sailed for the Pacific to pursue the sperm whale, which had fled from his old haunts in the Atlantic.<sup>19</sup> Notwithstanding the dangers and hardships incident to the occupation, the number of vessels engaged in

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<sup>18</sup> They also furnished the Russian-American settlements with European articles in exchange for furs. In 1809 Russia complained of the "illicit" trade of American citizens on the North Pacific coasts. Later, Count Romanzoff, the Russian Minister of Foreign Affairs, at St. Petersburg, proposed to J. Q. Adams, the American plenipotentiary, an arrangement allowing Americans to supply the Russian settlements on the Pacific with provisions and manufactures, and transport the furs of the Russian Company to Canton, under the condition that they abstain from all intercourse with the natives of the Northwest coast. To this Mr. Adams explained that he could not agree. [Greenhow: *History of Oregon and California*, chapter xiv.]

<sup>19</sup> Alexander Starbuck: *History of the American Whale Fishery.*

it rapidly increased and exceeded that of any other nation." The thrilling excitement of chasing such gigantic game had a tinge of the romantic, and made privations more easily endured. "The blood more stirs to rouse a lion than to start a hare." Sometimes there were exciting races between English and American vessels for the same whale, and when the agility of the American sailor won by successfully throwing his ponderous harpoon, he was greeted with repeated shouts of applause."

The plan of getting seals in the South Seas for the China trade was early undertaken. Mr. Edmund Fanning tells us in his "*Voyages Around the World*," that in May, 1792, the brig *Betsey*, under Captain Steele, and owned by Mr. Nexsen, left New York upon such an expedition by way of Cape Verde and Falkland islands, but it never reached Canton. In 1797, Fanning, as commander of the *Betsey*, sailed by the same route to the Pacific, and after visiting Washington, Fanning and other islands, reached Macao and Canton. He found living on Tinian Island Mr. Swain, of Nantucket, and several others who had escaped from a wrecked English vessel. Among them were the widow and servant woman of the captain. On the route back to New York he defeated a band of pirates.

In January, 1800, the *Aspasia*, with twenty-two guns, was sent by New York gentlemen to explore and get seals in the South Seas. She was commissioned by the United States Government as a letter of marque. At Valparaiso she was detained by Spanish officials, who suspected that she was a British ship-of-war." She continued her voyage to Canton and returned to New York, but part of her cargo

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"In June, 1795, and again in May, 1811, the British Parliament passed an act offering premiums in order to encourage British fisheries in the South Seas. The act also encouraged Americans to reside in England except when on the whaling voyage. The United States offered no bounty.

"See an article in the *N. Am. Rev.*, Jan., 1834.

"Fanning's *Voyages around the World*, etc., 1792-1832. Boston, 1833.

was lost by a wreck and the adventure resulted in no financial gain. The brig *Union*, under Captain Pendleton, left New York on a similar voyage by way of Sydney, and to the Fiji Islands, and in 1803, Delano, who had sailed to China in the *Perseverance* by way of Hawaii in 1799, went directly across from Peru to Canton," stopping at Lobos Islands and Wake Island.

A few Americans reached the Fiji Islands early in the century. Charles Savage, reputed to be an honest sailor belonging to the American brig *Eliza*, which was wrecked in the Fijis in 1808, became a kind of "head man" at Bau, the Fijian capital. His influence in the government probably was due to the disturbed condition of the islands and the presence of several shipwrecked and runaway seamen, and of twenty-six convicts who had escaped from New South Wales in 1804." Firmly established at Bau, he demanded and received some of the "highest ladies of the realm" for wives," but his children were all still-born, and his hopes to establish white sway were wrecked. The arrivals from New South Wales died out rapidly by fights or irregular life in the hot climate." Savage was put to death and eaten in March, 1814.

By the close of Jefferson's administration American interests in the Pacific were of sufficient importance to attract the attention of the Government. In the spring of 1812 President Madison gave Fanning a commission as commander of an expedition of discovery, to consist of the ships *Volunteer* and *Hope*, and to go to the southern hemisphere and voyage around the world. Secretary Monroe furnished him letters from European ambassadors and consuls recommending him to the kindness and protection of vessels and officials of their nationality. When the expedition was nearly ready, war with England was declared which prevented it from sailing.

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" Delano's Voyages. Boston, 1818.

" Seemann, p. 406.

" Capt. I. Erksine: Western Pacific, p. 197.

" Dillon: Discovery of the Fate of de la Pérouse.



## CHAPTER II.

### OCCUPATION OF MADISON ISLAND IN THE WAR OF 1812.

One of the most interesting American episodes in the Pacific is the formal occupation of Madison Island by Captain David Porter in 1813, while he was engaged in protecting American whaling interests in that vicinity.

Before the declaration of war with England in 1812, American whalers on the coast of Peru often suffered from the piratical acts of Peruvian privateers, who also cut them out from Chile ports where they had gone to recruit.<sup>1</sup> J. R. Poinsett, of South Carolina, was sent to remonstrate, but when the Anglo-American war began, he found that the corsairs, as a fresh pretext for plunder, claimed they were allies of England.<sup>2</sup> Learning that an expedition sent by the authorities of Lima had captured Concepcion and Talcahuano, and that at the latter place a Limian armament of two men-of-war and 1500 troops was detaining many American vessels, he resolved to resort to stronger measures than those of diplomacy. Joining the Chilean army, he directed its movements until the enemy was driven from the town and the whalers released. Though Lima yielded to muskets and cannon, her depredations did not entirely cease until the arrival of Captain Porter in the United States frigate *Essex*, the first United States ship-of-war to spread her sails in the Pacific.

On October 6, 1812, Porter had received his orders for

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<sup>1</sup> Alex. Starbuck: History of the American Whale Fishery.

<sup>2</sup> Porter: Journal of a Cruise in the Pacific, 1812-14. N. Y., 1822.

a long cruise. After reaching the South Atlantic, he had learned that the people in Buenos Ayres were starving, and unable to supply his wants, and that Montevideo was invincible. He at once shaped his course for the Pacific, and on March 15 landed at Valparaiso, where he was astonished to learn that Chile had declared her independence from Spain, and that the viceroy of Peru had sent out cruisers against American shipping.\*

Porter's appearance in the Pacific was of great importance to American whaling interests. He at once proceeded to destroy unfriendly vessels, and to break up the British whale fisheries off the coast of Chile and Peru. After capturing British property worth two and a half million dollars, and 360 British seamen, whom he liberated on parole, he decided to seek a place of safety where he could put his ship in a condition to return home, and, at the same time, give his men some amusement.

Sailing to the group discovered by Ingraham in 1791, he anchored at Madison Island (Nukuhiva, or Sir Henry Martin's Island), which he proceeded to occupy for the United States, and to conquer and make them tributary to the United States by the request and assistance of the friendly tribes. He built Fort Madison (4 guns) and a village which he called Madisonville. The waters where he anchored, he named Massachusetts bay. In taking formal occupation on November 19, 1813, Porter declared that the natives by their own request, and in order to render secure the United States claim to the island, were adopted into the great American family; and that they, on their part, had promised to give welcome hospitality and protection to American citizens who visited the islands, and also to endeavor to prevent subjects of Great Britain from coming among them during the continuation of the War of 1812.

In his declaration, which he read, he said: "Our rights

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\* Navy Dept. Tracts, vol. xiv, No. 22; Essex Inst. Hist. Coll., vol. x. Salem, 1870.

to this island being founded on priority of discovery, conquest and possession, cannot be disputed . . . Influenced by considerations of humanity, which promise speedy civilization . . . as well as by views of policy, which secure to my country a fruitful and populous island, possessing every advantage of security and supplies for vessels, and which, of all others, is the most happily situated, as respects climate and local position, I do declare that I have in the most solemn manner, under the American flag displayed at Fort Madison, and in the presence of numerous witnesses, taken possession of said island, called Madison Island, for the use of the United States . . . ; and that the act of taking possession was announced by seventeen guns. . . . And that our claim to this island may not hereafter be disputed, I have buried in a bottle, at the foot of the flagstaff in Fort Madison, a copy of this instrument, together with several pieces of money, the coin of the United States.”<sup>4</sup> This deed was signed by Porter, nine United States naval officers and others.

While on the island the American forces intervened to secure peace between the natives, and joined the friendly tribes in their wars against the Happaes.

On December 13, Porter sailed for Valparaiso, leaving Lieut. Gamble in command with four prize ships, twenty-one marines and six prisoners. He reported that he had completely broken up British navigation on the Pacific, and injured her navigation to the extent of two and one-half million dollars. In the following March, however, after a desperate encounter<sup>5</sup> outside the port, watched by thousands of witnesses from surrounding hills, he was compelled to surrender to Commodore Hillyar, of the British navy, who had recently arrived with the *Phoebe* and the

<sup>4</sup> Capt. D. Porter: *Journal of a Cruise to the Pacific in 1812-14.* N. Y., 1822.

<sup>5</sup> Poinsett, during the engagement, requested the Governor of Valparaiso to protect the *Essex*, but his request was not granted. He left the country soon after.

*Cherub*. He and part of his crew, on parole, were allowed to sail for New York on the *Essex, Junior*. Several of the crew of the *Essex*, who were left at Valparaiso, enlisted in the "patriot" army at Santiago.

Gamble found his stay at Madison Island far from pleasant. His life was rendered miserable by rains and squalls, and by the character of his crew, some of whom were worthless and ready to desert at every opportunity. He was also much troubled by the natives, who showed signs of attack and soon began to kill the swine left by Porter. Threats of devastation being insufficient to prevent theft by some of the natives, he found it necessary to attack and chasten them. After they had fled and the chiefs offered to replace the swine, he asked an indemnity for his trouble and also demanded the surrender of the thieves, whom the chiefs claimed they could not apprehend, but finally closed the affair by exacting a promise of future vigilance. Later, when intertribal quarrels and wars were renewed, he successfully restored tranquillity by intervention. Supplies becoming precarious, he sailed to other islands to barter iron for swine and vegetables, and at almost every place he landed the natives asked his aid in intertribal wars which had arisen chiefly over fishery regulations or property. But he had enough to engage his attention in watching and punishing his own men, who went to sleep on watch, or permitted the clandestine visits of female natives, or left camp without permission or under pretence of washing their clothes at a distant brook. Early in May, seven men on deck defiantly refused to work, bound and imprisoned Gamble and others, hoisted the English flag, spiked the guns at the fort, took the powder and other materials and set sail. Gamble again had reason to become alarmed at the natives, who began to repeat their thefts and finally attacked the ships, massacring four midshipmen.

Burning one of his vessels, with seven men and a leaky ship without a boat or anchor, he sailed to Owyhee (Hawaii) for supplies and men. In June, after he had

started to return to Valparaiso, he was captured by the British warship *Cherub*. Reaching Valparaiso (on September 23), where he was entertained by the American vice-consul, Blanco, he heard the strange news that Wellington had been sent to the United States with 20,000 troops and created Emperor of North America! He finally arrived at New York in August, 1815.

Though Madison Island was afterwards recommended as a convenient location for a naval and supply station, the United States never took any step toward occupation.

Porter published an account of his experience in the Pacific, in which he described the natives and made numerous references to the beauty and grace of the native women, who roamed at pleasure and were promiscuous in their intercourse with the sailors. The English *Quarterly Review* ridiculed him for occupying the island, and severely criticised him for his voluptuous descriptions of the island beauties, and for the freedom which he permitted between them and the sailors, as well as for cruelty to the natives. Porter, in reply, after stating that Ingraham's discovery of 1791 gave the United States a just claim to the island, referred to the license of the sailors under Captain Cook and others, and to previous writers, who had described feasts with native women. In defending himself from the charge of cruelty, he presented the British record in the Pacific on that score, and stated that men away from law and in danger, must judge of the means of safety and act according to circumstances. He declared that the safety of his ships, prizes and men depended upon maintaining a position on the island, and that it was necessary to conciliate the natives by joining them against their enemies.

### CHAPTER III.

#### EARLY AMERICAN INTERESTS ON THE PACIFIC COAST.

American interests on the Pacific coast increased with the number of American ships sailing between that region and China, though its political importance for the United States attracted little attention until 1803, when President Jefferson sent Meriwether Lewis and William Clarke to explore along the Missouri and trace some convenient stream to the Pacific with a view of opening an inland trade route.<sup>1</sup> Jefferson favored every reasonable facility and patronage by the Government to encourage the trade of United States citizens with that distant region.<sup>2</sup> In 1810 he considered that an early settlement on the western coast would be a "great public acquisition," and looked forward to the time "when its descendants should spread themselves throughout the whole length of the coast," covering it with free Americans, independent and self-governing. By invitation, and the offer of government protection, he encouraged Astor to fit out a vessel with seed and provisions and to send 120 persons (some by sea and others by the overland route) to the mouth of the Columbia, where in 1811 they established the American settlement of Astoria.<sup>3</sup>

Astor had long been engaged in commerce and trade between the Northwest coast and China. For the purpose of securing such a control of that trade as to lessen the danger of rivalry by the Northwest Company, in 1810, at

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<sup>1</sup> Lewis and Clarke: Expedition, etc. Phila., 1814.

<sup>2</sup> Jefferson's Works, vol. vi. To John Jacob Astor, May 24, 1812.

<sup>3</sup> Washington Irving: Astoria.

New York, he assisted in the organization of the Pacific Fur Company with himself at its head. For clerks and *voyageurs* he selected principally Canadians. Macdougall, who was appointed to superintend the new enterprise, sailed in the *Tonquin* in September, 1810. At Owyhee, in February, 1811, he made an unsuccessful attempt to negotiate a treaty with Kamehameha, but he obtained supplies, and also men, to engage in service on the coast. His settlement at Astoria, near the mouth of the Columbia, was joined in January, 1812, by the overland detachment of sixty men, who had endured many hardships and dangers on the route. On May 5, 1812, the *Beaver* arrived with more men from the United States and with 36 Sandwich islanders. In January, 1813, the community, already embarrassed by the destruction of the *Tonquin* and her crew by the Indians near the entrance to the Straits of Fuca, was thrown into gloom by the news that the United States had declared war against Great Britain. On October 16 the Canadian managers of the company entered into an agreement by which all the establishments, furs and stock were sold to the Northwest Company for \$58,000. The captain of a British vessel, which arrived soon after, hauled down the American flag, replaced it by the British flag, and changed the name of the place to Fort George. Astor, on hearing the news, considered the sale disgraceful.\*

In 1815 Monroe demanded the restitution of the post. Two years later he sent the *Ontario* to establish a settlement on the Columbia. When Castlereagh expressed regret and a desire to avoid collision, Secretary Adams wrote Rush, at London, that it had not been anticipated that England would be disposed to start questions of title with us on the shores of the South Sea, stating that she would hardly find it useful or wise to resist every possibility of extension to our national dominion.

The expansive designs of Russia in America were a

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\* Greenhow: History of Oregon and California, chap. xiv.

source of some concern to officials of the United States Government. Prevost, the United States agent who had received the surrender of Astoria by the British, in a letter to Adams dated at Monterey, November 11, 1818, after referring to the Russian settlements made in 1816 at the Sandwich Islands and near the harbor of San Francisco, said: "May we not infer views to the early possession of this harbor, ultimately to the sovereignty of entire California. Surely the growth of a race, scarcely emerged from the savage state, on these shores is to be deprecated, and should excite the jealousies of the United States and induce her to preserve a station, which may serve as a barrier to northern aggrandizement."

Floyd's Report<sup>\*</sup> in the House in January, 1821, estimating that there were already \$8,000,000 of property owned by the United States in the Pacific, and calling attention to Russia's menaces against Turkey, Persia, Japan, China and Spanish America, and her plans to command the North Pacific, urged the propriety of taking energetic steps to guard our increasing interests on the Columbia, whose valley, Benton thought, might soon become the granary of China and Japan, who had not yet opened diplomatic relations with us. It was suggested that settlement of the country might be facilitated by the immigration of Chinese. Though the friends of the report, in support of their views, emphasized the importance of fisheries and trade with China, and spoke of possible growth of the lumber trade, and of agriculture, in the future, the members of the House gave the subject little discussion and voted to table it. The majority probably considered such an extension of the Union chimerical. Tucker (of the opposition) of Virginia, said necessarily the Rockies always would be an impassable barrier between interests.

Russia had not only made establishments in California and Hawaii, but threatened to enforce the Russian claim

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<sup>\*</sup> Rp. Com. 45, 16-2, Jan. 25, 1821.



to make the Pacific a *mare clausum* north of  $51^{\circ}$  on the American coast and  $45^{\circ}$  on the Asiatic coast. An edict of Alexander, September 4, 1821, under pretext of preventing smuggling, stated rules for limits of the navigation and communication along the coast of East Siberia, the Northwest coast of America to  $51^{\circ}$ , the Aleutian, Kurile and other islands, and prohibiting foreign vessels from coming nearer than 100 Italian miles to these places, except in gales or when in need of provisions, etc. President Monroe was surprised at the Russian claim to  $51^{\circ}$ , etc., and Secretary Adams, February 25, 1822, asked Poletica, the Russian minister, to explain the Russian grounds of right.

Poletica, in a long reply, of February 28, denying that Spain had ever had a right to claim north of  $42^{\circ}$ , said  $51^{\circ}$  was only a mean point between the Russian establishment of New Archangel at  $57^{\circ}$  and the American colony on the Columbia at  $46^{\circ}$ . In justification of the 100-mile prohibition, he said that the foreign adventurers, nearly all of whom were American citizens, by their illicit trade and irregular conduct, and by selling arms to natives of Russian America, had been the source of pressing but unsuccessful remonstrances from the time when Russia began diplomatic correspondence with the United States, and that coercion, though not conceived in a hostile spirit, or to strike a blow at maritime interests of the United States, had become a necessity.\*

Adams could not understand how Russia could claim to  $51^{\circ}$  when she had only claimed to  $55^{\circ}$  in 1799, and was persuaded that American citizens would remain unmolested as heretofore in exercising their right to sell to the natives of Northwest America. He had no proof that the trade had been exercised in a spirit unfriendly to Russia. In his reply of March 30, he said that the right of the United States to navigate the seas near Behring, as well as elsewhere, was a part of our independence, and that her ves-

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\* Exec. Papers, 112, 7-1, vol. vi, Apr. 15, 1822.

sels had exercised that right from the period of her existence as a nation. In reply to Poletica's suggestion that Russia had a right to exclude foreigners from the sea north of  $51^{\circ}$  in America and  $45^{\circ}$  in Asia, Adams reminded him that the distance between those two points was only about 4000 miles.

Poletica, in a letter of (March 21) April 2, referred to eight Russian settlements in latitude  $48^{\circ}$  and  $49^{\circ}$  (462 persons) existing as late as 1789, and ventured to say that the great width of the Pacific would not prevent Russia from making it a closed sea, but he referred the matter to his government.

After the protests of the United States and Great Britain, Russia suspended her edict, and soon after Monroe's famous message of 1823, she granted the right of United States citizens to fish along the coasts of Russian America, except in the rivers and harbors; but, after 10 years, believing that the privilege had been abused, she refused to renew the agreement for allowing either fishing or trading.<sup>1</sup> Thus was the way prepared for the future acquisition of Alaska and the islands skirting the Behring sea.

The Americans, at an early day, also exercised considerable influence along the Pacific coast of Spanish America. R. J. Cleveland, in his "Voyages," tells us that as early as 1802 our sailors were advocating self-government to the people of Chile at Valparaiso. The revolution which opened in Chile, in 1817, gave a stimulus to American trade<sup>2</sup> and induced the United States to keep a small squadron on the west coast of Peru and Chile. With the emancipation of all Spanish America from the colonial rule of the mother country, Americans stopped more frequently along the west coast of Mexico and California.

The growth of American commerce and whaling interests

<sup>1</sup> Van Buren's Message of Dec., 1838.

<sup>2</sup> For an account of affairs on the coast of South America, 1817-20, see "Voyages" of R. J. Cleveland, who undertook a voyage under the auspices of John Jacob Astor.

in the Pacific and the Far East, during the administration of Monroe and J. Q. Adams, and the desire for ports essential to their protection, induced the Jackson administration, in 1835, to seek for the acquisition of territory north of 37° that would include the bay of San Francisco, and to undertake negotiations for purchase, but in vain. In December, 1841, Upshur, Secretary of State under Tyler, knowing that Americans were settling in California, and considering that the increasing commerce of the United States within the Gulf of California, and to San Francisco, together with the weakness of the local authorities, rendered it "proper that occasional countenance and protection should be afforded to American enterprise in that quarter," instructed Commander Thomas ap Catesby Jones to . . . "examine bays and harbors in the interest of commerce and science."

In May, on reaching Callao bay, Jones learned that a strong French squadron had sailed from Valparaíso in March, 1842. He strongly suspected that its purpose was to colonize or occupy California, or the Sandwich Islands, or the Washington Islands\* [a part of the Marquesas group]. His anxiety was increased by subsequent rumors and movements. On September 5, having learned from the Mexican papers that relations with the United States were strained, and having heard the rumor that Mexico had ceded California to Great Britain for \$7,000,000, considered that he would be justified by the Monroe doctrine in seizing California in self-defence, thereby securing a prior claim of conquest before Great Britain could obtain a claim by occupation. Sailing to Monterey on October 19, acting on his own authority, he took possession and ran up the United States flag, but on the next day he restored the Mexican standard.

Though Secretary Webster disavowed the exploit of

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\* Discovered by Captain Ingraham in 1791 and occupied by Captain Porter in 1813. Occupied by the French in 1842.

Jones, the United States Government continued to contemplate the acquisition of the port of San Francisco by peaceable cession, and finally occupied it in the interests of civilization and future security, opening opportunities for American protective influence in Mexico, and giving a stimulus to communication with the Orient and Panama by lines of ocean steamers.

## CHAPTER IV.

### EARLY RELATIONS OF WHALERS AND TRADERS WITH THE NATIVES.

The islands of the Pacific have often been the scenes of thrilling disaster, romantic adventure, unbridled license, conflict, mutiny, treachery, and bloodshed. Along the track of the early whalers and traders, who carried with them the vices as well as the virtues of a higher civilization, were occasional shipwrecks, horrible massacres, and shocking indecencies. In cases of collision with the natives, the latter were not always the first offenders. Among the daring whaling captains, many of whom were scientific navigators, some were unprincipled, severe and indiscreet, and others were sometimes unable to control a crew so far removed from the arm of civil law.<sup>1</sup>

The crews were a motley collection of Indians, runaway slaves, renegade tars from the British navy, Irish, Dutch, and Hawaiians, as well as the shrewd natives of Massachusetts. The majority, like "Long Tom Coffin," were brave, hardy, intelligent sons of toil from New England's scant soil, who, by the offers of a share of the cargo, were induced to leave home and friends for a three-years' voyage, and to become alert and vigilant in their business. Sometimes a youth, who had worn out the forbearance of friends and tutors, left the counting-room or college for the novelty of an adventurous life on the broad ocean, where bones were sometimes broken and lives lost in rough contests with the mammoth spouting inhabitants of the deep.

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<sup>1</sup> Cheever: *Island World of the Pacific*. C. S. Stewart: *A Visit to the South Seas in the U. S. Vincennes, 1829-30*. N. Y., 1831. J. N. Reynolds' *Address*, 1836.

Broils and mutinies occurred, but were usually put down. That, in 1823, on board the *Globe*, owned by a Nantucket firm, is the worst recorded.<sup>1</sup>

With Thomas Worth, commander, and twenty others, it left Edgarton December 20, 1822, sailed via Cape Horn and Hawaii to Japan seas, from which it returned to Hawaii with 550 barrels of oil. The crew had complained among themselves as to the irregularity of the meat supply. At Hawaii, six men deserted, and were replaced by five others, after which the vessel cruised toward Fanning's Island. The officers found frequent occasion to reprimand the new members, and caused one to be severely flogged. In January, 1824, one Comstock planned a mutiny and murdered the captain and mates. He ordered the third mate to be thrown overboard alive, and had his hands chopped off when he attempted to hold the ship. He then directed the ship via Kingsmill and Marshall's Island to the Mulgrave Islands, where he proposed to form a settlement. Here he joined a gang of natives, and, being suspected of treachery, was shot by Payne, one of his fellow-mutineers. Smith and six others, fearing Payne, escaped with the *Globe* to Valparaiso, where they were arrested by United States Consul Michael Hogan and sent to Nantucket. Payne, who, with nine others had been left at the Mulgraves, went into a paroxysm of rage when the absence of the vessel was discovered, but soon drowned his trouble by taking a native wife whom he had brought from another island, and his example was followed by others, who seemed to have had no fear of the natives. One morning, Payne, awakening and discovering that his wife was gone, grabbed muskets and started in search, found her, shot at her, flogged her severely, and put her in irons. His severities irritated the natives, who soon began to steal and to resist the restoration of articles. Probably because they were jealous of the

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<sup>1</sup> Wm. Lay and C. M. Hussey: *Narrative of a Mutiny on Board the Globe*, New London, 1828.

chastity of their wives, the natives finally murdered all the whites except two, Lay and Hussey, who were saved only by the interposition of the natives, and were rescued in December, 1825, by Lieutenant Hiram Paulding, of the United States naval vessel *Dolphin*, which had made search by order of Secretary of the Navy.\*

At Onavoorā, in the Hawaiian group, which was a rendezvous for whale ships,<sup>4</sup> especially from January to April, many seamen, freed from a long confinement on board their vessels, often became so insubordinate and licentious that the captains were unable to restrict their propensities. In some cases they threatened a riot unless the chiefs and missionaries should acquiesce in their demand for the repeal of the restrictions that deprived them of the society of females.<sup>5</sup> Even some of the crew of the United States ship *Dolphin*, in 1826, joined in opposition to missionaries. Deserters were often secreted by the natives, and, in many cases, only to obtain the large rewards which captains offered for their return.

The Secretary of the Navy, seeing the extensive interests of the United States in every part of the Pacific, and having knowledge of the difficulties which not infrequently occurred in the neighborhood of many of the islands, considered the occasional presence of a public force very important. During the South American revolt, the duties of the small squadron on the west coast of Chile and Peru, where American commerce was in danger from Spanish ves-

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\* Paulding: *Cruise of the Dolphin*.

<sup>4</sup> Honolulu became a depot for fresh supplies, repairs, and the temporary storage of whale oil. As early as 1823, sometimes forty whaling vessels could be seen there on the same day. The importance of the islands was recognized by the United States Government on September 19, 1820, when Secretary Monroe appointed John C. Jones as "Agent for Commerce and Seamen."

<sup>5</sup> In 1825 the chiefs of Hawaii issued a proclamation against women visiting vessels for immoral purposes, and crews tried to get missionaries to have it revoked. Lieutenant Percival arrived on the *Dolphin*—protested against the decree and by threats induced the chiefs to rescind it.

sels, had prevented it from visiting the Society and Sandwich Islands, etc. In 1825-6, the unsettled condition of the South American governments and the possibility that many from the former navy of Peru and Chile would resort to piracy, still exposed our commerce to dangers which seemed to require a "competent naval force" on the coast from Cape Horn to California.\* The need of a passage through the Isthmus of Panama was felt,<sup>†</sup> and in 1826, Captain Thomas ap Catesby Jones was ordered to go to the Hawaiian Islands to protect commerce, to relieve the islands of American seamen who had improperly deserted from whalers, to arrange to prevent desertions in the future, and to secure debts due American citizens. He induced the sailors there to join ships in need of their services, and proceeded to negotiate "a treaty with the king (December 23, 1826) by which the latter agreed to permit trade, to aid wrecked vessels, to assist in preventing desertions, and, in time of war, to protect United States ships and citizens, in the Hawaiian Islands, against all our enemies." He found that the British consul and influential foreigners and shipmasters were against the missionaries."

American commerce in the Pacific was at this time augmenting very rapidly. In 1826 there were 2000 seamen at Honolulu alone, and, for their protection, the Secretary of the Navy, in December, 1827, recommended that six vessels be kept in commission in the Pacific.<sup>‡</sup> By 1828 there was no longer any fear of our commerce being molested by Spanish ships, and the Navy Department hoped that our armed vessels might frequently visit the Society, Sandwich and other islands most frequented by our merchant ships.

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\* Rp. Secy. of Navy, Dec., 1826.

† H. Res., Dec., 1825. Naval Com. Rp., Jan., 1826.

‡ Ruschenberger: *Voyage Around the World*, 1836-37, chapter iv.

\* Though this treaty, or convention was never ratified by the United States it continued to be a tacit understanding.

† Rev. J. M. Alexander: *Islands of the Pacific*, chap. vii.

‡ Rp. Secy. of Navy, Dec. 1, 1827.



In 1829 it was estimated that in one year Hawaii was visited by 100 American vessels with cargoes valued at \$5,000,000. American merchants were seeking to increase trade with the Orient, and to secure a greater protection from the American Government.

In 1829 Captain Finch, with the United States ship *Vincennes*, was sent by the American Government to endeavor to improve our relations in the Pacific." He visited Nukuhiva [of the Washington Islands], and, through William Morrison, as an interpreter, who was collecting sandalwood there, endeavored to persuade the chiefs to stop the civil wars which arose from tribal jealousies, and often from some mere petty theft, insult or misunderstanding. He explained that our purpose was good-will and peace, and that our vessels fought only those who ill-treated our defenceless trading vessels."

Passing on to Tahiti, where natives were less rude and naked than the Nukuhivans, he saw several white persons, attended a mission church, and found that since 1821 the island had been governed by a code of laws (and penalties) including trial by jury. Finding the seventeen-year-old Queen Pamaré I. at work (September 1, 1829), he alluded to the recent conduct of herself and the regent toward some deserters from an American whaler, and, after the diplomatic attempt of the regent to screen herself and the queen, he pleasantly dismissed the subject in a manner calculated to prevent a recurrence of such conduct. Several secondary chiefs made short speeches expressing pleasure as to the purpose and the manner of the visit, and the queen sent a letter to President Jackson, saying: "Continue to sail your vessels without suspicion. Our harbors are good and our refreshments abundant."

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<sup>19</sup> C. S. Stewart: A Visit to the South Seas.

<sup>20</sup> In his reports, Finch said that for the convenience of the United States the situation of Nukuhiva was more convenient than Oahu or the Society Islands—unless a canal should be cut through the Isthmus.

Conditions at Hawaii caused the missionaries to welcome the arrival of the *Vincennes* and Captain Finch, as well as Chaplain C. S. Stewart, who had been a missionary there in 1822-5. Unfortunately, the merchants and the missionaries were at loggerheads, the missionaries saying that Americans, and other foreigners, had been guilty of bad conduct on the islands, and had opposed all efforts of the religious teachers, and that on the slightest pretext the foreign officials threatened vengeance upon the "timid and peace-loving rulers," who had accepted the decalogue as their only code of laws. On the other hand, the foreign residents (merchants) complained that the government was controlled by the missionaries, and was unsatisfactory. Finch saw at Oahu many indications of irregularities in commerce, severity to crews, and bad effects of desertions. Consul Jones, speaking (October 30, 1829) of the growing importance of the Sandwich Islands to the increasing American trades, said there should be semi-annual visits of United States war vessels to reduce desertions and mutinies, and to punish the guilty.

At a reception given by King Kanikeaouli, Captain Finch presented him with maps and books, and read him a friendly message from the President," assuring him that the United States desired to preserve his sovereign rights, and sent war vessels for protection only where native governments failed to protect. Capt. Finch advised him to prevent the secretion of deserters, to liquidate his debts, to cease competing with private individuals in the tavern business, to spend his time usefully, to learn English, and to hold semi-annual meetings of his chiefs to revise state affairs. He stated that United States citizens violating the laws should be censured.

American merchants and traders, residing at Oahu, protested against communication with the king by the Secretary of the Navy instead of through the regular channels

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" Laura Fish Judd: Honolulu, etc., N. Y., 1880.

of the State Department. They denied that American citizens had been guilty of bad conduct on the island, declared that the United States would have no cognizance of offences committed beyond the limits of its jurisdiction, and insinuated that the *Vincennes* had done nothing but aid in saddling a religion on the "ignorant and unsuspecting islanders."

The king wrote to President Jackson (November 23, 1829) thanking him for the maps and globes and hoping for perfect agreement. The chiefs, in a conference with Finch, acknowledged that they owed American merchants \$50,000 and pledged themselves to pay it in nine months."

During the next few years there were still other sources of dispute at Hawaii. The king, who had charged no tax or rent to foreigners, feared that by leasing land he would run the risk of losing control over the islands, and claimed the right to prevent American citizens from selling or otherwise transferring their houses, stating that they reverted to him when they passed from the original owner. In 1836 Commodore E. P. Kennedy, of the United States ship *Peacock*, opened negotiations with the king as to subjects of dispute, but no agreement was reached."

Captain Benjamin Morrell, of the *Antarctic*, who sailed from New York September, 1829, leaving his wife at Manila (with the wife of an English merchant), in April, 1830, started on a trip to the Fijis, and has left us an interesting narrative of his relations with the natives of Williams (c. 5° N., 153° E.), Monteverdeson's, Massacre and Bergh's Islands, and of islands discovered by him north and east of New Guinea. At Williams Island, while the girls were bringing him wreaths of wild flowers and receiving beads, other natives were lurking in the bushes ready for a treacherous attack. At the Monteverdeson's Islands, the natives

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<sup>18</sup> Stewart: *Visit to South Seas*, vol. ii, p. 212.

<sup>19</sup> Ruschenberger: *Voyage Around the World, 1836-37*, pp. 498-502.

brought cocoanuts and bread fruit, and those who wore clothes (the married) stripped it all off to trade for old knives and beads, but some were preparing to make an attack in canoes, and Morrell said he left to prevent slaughtering them. At the Massacre Islands Morrell made a treaty of amity and commerce with King Nero, but soon after beginning to erect a house and plant garden seeds, he saw signs of treachery, thieving and dissimulation, and later, sixteen of his men were killed while making a desperate defence. The natives suffered a heavier loss, and Morrell, after going to Manila for more men, returned in September to administer a wholesale chastisement. With "eloquent cannon," he repulsed a flotilla of the natives, and then, after quieting those of the excited crew who wanted to depopulate the island, he purchased with cutlery a small island (Wallace's) and landed seventy men to cure bêche-de-mer. On September 18, he repulsed several hundred yelling natives that invaded the island, but being still harassed from time to time, he did not wait to complete his cargo, but burned his houses and bade adieu to the crowds of inhospitable islanders who had eaten the whites they had killed, and had apparently never suffered any bad effects. After visiting other islands north and east of New Guinea, where he obtained two natives, Morrell returned to New York via Manila, Singapore and the Cape of Good Hope, and in 1832 published an account of his voyages, claimed that he had discovered a group of islands where a great opportunity was waiting for the advance of enterprise, and encouraged the fitting out of a good vessel with a crew of young men."

In March, 1834, T. J. Jacobs, aged 16, and just out of college, joined a small trading expedition to the Pacific in the clipper *Margaret Oakley*, of which Morrell was captain. The expedition proved to be principally one of adventure, exploration and romance in the region of Papua (New

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"Capt. Benj. Morrell: Narrative of Four Voyages, 1821-31, N. Y., 1832.

Guinea), Bidera (New Britain) and the picturesque Admiralty Islands. Trade was opened with well-armed savages, beads and pictures were given to the girls and young women who came to the vessel in canoes, and interest was taken in watching the natives in their love-making and their daily sea-bath. Some of the crew would have been willing to remain in this rural, romantic land of paradise, whose simple-hearted people sometimes besought them not to go. Jacobs, whom the prince and several women tried to induce to marry and settle on their island, wrote: "I felt strongly tempted to embark forthwith, in company with several shipmates, for the uninhabited island of Garone, in the Morrell group, and colonize the beautiful bay. At present it was impracticable; but at another time the captain intended to return with a party of young men and women from the United States for that purpose." In 1844 he was still contemplating a trading and colonizing expedition to that quarter, which he considered to be "exceedingly inviting." The *Oakley*, during her voyage, reached the vicinity of Norfolk Island, which had been uninhabited when visited by Captain Cook, in 1774, but was now a penal colony for life convicts—for those of a worse class than were banished to Sydney (Botany Bay). She then sailed through the Sulu straits and traded at Sulu harbor, passed the mouth of Manila bay and exchanged cargo below Canton. Morrell, stating that the romance of the voyage was ended, dismissed many of the crew and started to return to New York, but probably engaged in some enterprise in the South Seas."

Many Americans suffered shipwreck, privation and death in the Fijis. About 1827, the *Oeno* of Nantucket, was shipwrecked there, and most of the crew were massacred. In 1830 an English vessel brought news that a young lad, whose widowed mother lived at Nantucket, was still alive on one of the islands. Captain Coffin and part of the crew

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"T. J. Jacobs: *Scenes, Incidents and Adventures in the Pacific Ocean*. N. Y., 1844.

of the *Awaskonks* were murdered on the islands a short time later, and the brig *Fawn*, of Salem, Massachusetts, was lost there in 1830. In the same year the *Glide*, owned by Joseph Peabody, of Salem, struck a rock and sprung a leak, and after going to Manila for repairs, returned to trade and soon found it necessary to retaliate on natives by driving them to the mountains and destroying some of their canoes." The king seemed friendly, and rebuilt drying houses destroyed by his hostile natives, but after his retirement to his town, thirty miles in the interior, the *Glide* found it convenient to leave, and was wrecked near by in a storm. A chief claimed the wreck, and the natives were soon laden with plunder. The officers and crew seemed to enjoy the life on the island, amidst bounteous fruit, festival and entertainment. They (16) were finally carried by the *Harriet* (which arrived from New York May 22, 1831) to Wallis Island, which they said had a beautiful climate, plentiful fruits and hospitable natives. Arriving soon after at Oahu, where American missions had been established since 1820, some of them, reflecting that missions accomplished more good than warriors "armed to the teeth," stated that the Fijians could be improved like the Hawaiians and Samoans."

In many instances unfortunate seamen were held as captives by the islanders. In 1833, A. S. Joy, of Nantucket, learned that there were white prisoners on the Tonga and also on the Navigators' Islands. On July 30, 1830, twenty-two young men, excited with the hope of seeing distant regions and bettering their fortunes from the treasures of the deep, left New Bedford in the *Monitor*, under com-

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\* When the *Glide* (in November, 1830) stopped at Overlau, of the Fijis, David Whelpy, who had been an American chieftain there since deserting a whale ship from Nantucket several years before, was on friendly terms with the King of Bau, and seemed to have great influence over the natives.

\* W. G. Dix and James Oliver: *Wreck of the Glide, with Recollections of Fiji and Wallis Island.* N. Y., 1848.

mand of Captain E. C. Barnard. They rounded the Cape of Good Hope and started for one of the Ladrões, but after much bad weather, their vessel struck on a coral reef off Pelew Islands, nearly 1000 miles east of the Philippines, and was lost. The survivors were detained by the natives, and through the influence of an Englishman, who had deserted his vessel twenty years before, and was now a kind of chief, they lived a life of ease and plenty for six months; but tiring of the place, they escaped to North's Island, where they were attacked. Captain Barnard and one other returned to New York to tell the story of their adventure.

The news of the capture and plunder of the *Friendship*, of Salem, Massachusetts, at Quallah Battoo on the coast of Sumatra (where she was engaged in the pepper trade) on February 9, 1831, induced the United States Government to take prompt action for securing better protection for American sailors and commerce along the coasts and on the islands of the Far East.<sup>21</sup> The United States frigate *Potomac* was immediately sent to investigate, and being able to obtain no satisfactory negotiations, proceeded to retaliate by attacking the town. The American troops silently disembarked after midnight, firing soon began, and notwithstanding the hard fighting of the whooping natives, in which even women participated, the Malays were defeated and the American colors in a few hours waved over their forts.<sup>22</sup> Captain Downs, in making peace, informed the natives that if they perpetrated any more outrages they would be punished again. J. N. Reynolds, who went with the expedition, urged that a few instances of prompt retaliation would have a good effect by impressing nations with our power. Sailing home via Oahu, he learned from a letter of Consul J. C. Jones to Captain Downs, that persons from nearly all the whalers caused trouble to the captains by at-

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<sup>21</sup> President Jackson's Message, Dec. 6, 1831.

<sup>22</sup> Francis Warriner: *Cruise of the U. S. Frigate Potomac round the World, 1831-34*, N. Y., 1835. J. N. Reynolds: *Voyage of the Potomac, 1831-34*, N. Y., 1835.

tempts at mutiny or desertion, and afterwards became outlaws on shore. He believed that some of the causes of abuse in the whale fleets could be reached only by the strong arm of the United States Government, and advocated that, besides regular visits of war vessels, the number of consuls should be increased and that they should receive regular salaries.<sup>23</sup>

Observing our increasing interests at Valparaiso and northward, and looking westward to the new and extensive island world, Reynolds said the vast Pacific was, by force of events, becoming an ocean in which the Americans were immediately interested, and would probably be the theatre of our future sea fights. He urged the necessity of a government exploring expedition to the South Seas, greater protection to trade, and the establishment of safe harbors.

Soon after the dispatch of the *Potomac* to Sumatra, the Jackson administration, in view of the fact that the United States had no colonial establishments, felt the necessity of securing ports in the vicinity of Borneo, Siam and Japan, at which American vessels might always be received and protected, and sent Edmund Roberts with instructions (1832) to negotiate for treaties for the safety of seamen and commerce.<sup>24</sup> Soon the project for a United States exploring expedition to the Pacific, proposed long before, was revived, and the Government was finally induced to undertake it.

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<sup>23</sup> The *Potomac*, stopping at the Galapagos group, carried the news to J. Vilomil, a native of Louisiana, that he had been appointed consul at Guayaquil but he could not be induced to accept it. See page 60.

<sup>24</sup> 1 Sp. M., 52.



## CHAPTER V.

### THE UNITED STATES EXPLORING EXPEDITION,<sup>1</sup> 1839-43.

During the first half century of her existence, though her vessels sailed around the globe, and European powers were planting colonies and making explorations on far-off shores, the United States did not adopt any systematic effort to obtain geographical knowledge in the Pacific where American enterprise and commerce had been extending so rapidly. It was a period of internal development; but the importance of pointing out harbors and paths for seamen in the Pacific was gradually learned from the school of experience.

From the earliest times the desire to secure a lucrative trade was not the only motive which induced men to sail on long journeys to the distant seas. Some sought adventure and romance, and others were urged by the desire to discover new fields of activity. In the spring of 1812, President Madison took steps to aid an expedition under Captain Edward Fanning to make explorations in the South Seas and voyage around the world, but the enterprise was abandoned on account of the opening of the war with England.<sup>2</sup> In September, 1817, the *Sea Fox* sailed from New York to the New South Shetlands and Palmer's Land.<sup>3</sup>

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<sup>1</sup> Charles Wilkes: *The U. S. Exploring Expedition*. 5 vols. Phila., 1845. [Subsequently, eleven additional volumes were published.]

<sup>2</sup> H. Doc. 57, 26-1, vol. ii.

<sup>3</sup> Captain Briscoe, of London, in 1832, observed an island 67° 15' south latitude, 69° 29' west longitude, which he took possession of in the name of William IV. and called Adelaide Island, in honor of the English queen. Commenting on this act, Captain

In 1822 Captain Benjamin Morrell sailed to the Antarctic seas in the *Wasp*. Reaching  $70^{\circ} 14'$ , he resolved to make an appeal to the United States Government for countenance and assistance to enable him to go farther. "To the only free nation on the earth," said he, "should belong the glory of exploring a spot of the globe which is the *ne plus ultra* of latitude."<sup>4</sup> Fanning was confident that vessels could reach the South Pole, and in 1829-30 he was in charge of the brigs *Seraph* and *Annawan* on an "infant expedition" to the South Seas.<sup>5</sup>

In 1826, John N. Reynolds, a native of Ohio, and a congressman (who went with the *Annawan* expedition as far as the west coast of South America), had proposed the project of a Pacific and Polar expedition under the auspices of the Government.<sup>6</sup> His idea was seconded by citizens of Nantucket and other New England seaports, and by the legislatures of seven States. The Maryland House of Delegates, mentioning the enterprise of other nations in acquiring geographical knowledge, extending their influence, and opening new channels of commerce, asserted that the United States, after its success in the stu-

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Morrell said: "But these lands were visited fifteen years ago by our sealers and taken possession of in the name of our sovereign, the people; and when a true record shall be made . . . the name of Adelaide Island must be changed . . . We have a long running, unsettled account in this matter of giving names to places, with some of our neighbors, which we may as well begin to have posted up, for the purpose of preventing future disputes. . . . Our hardy seamen feel able even to cast anchor on that point where all the meridians terminate, where our flag may be unfurled and left to wave." [J. N. Reynolds' Address, 1836.]

<sup>4</sup> Capt. Benj. Morrell: *A Narrative of Four Voyages to the South Sea, etc.*, 1822-31, N. Y., 1832.

<sup>5</sup> Edward Fanning: *Voyages Around the World, etc.*, 1792-1832.

<sup>6</sup> During the summer of 1828 Reynolds had obtained data from whaling captains of New London, Newport, Nantucket, etc., and from their log-books, showing that 200 American vessels were engaged in whaling and seal fisheries, capturing about 8000 whales each year, and that our enterprising seamen had often discovered rocks, reefs, and islands, and in many cases had given valuable information to European chart makers.

pendous experiment of self-government in politics, with its increasing population and commercial relations and interest coextensive with the civilized world, could afford to enter into the "interesting and extensive field for enterprise in the Southern hemisphere," and offered a resolution that "a polar expedition could scarcely fail in adding something to the general stock of national wealth and knowledge, and to the honor and glory of the United States."<sup>1</sup> Other petitions or memorials urged that the American industry in the Pacific having increased the wealth of our country, and furnished a nursery for bold and hardy seamen, as well as a source of employment and human comforts, had made intercourse with the Pacific a matter of public interest and should be encouraged by the survey of islands and coasts.<sup>2</sup>

In January and February, 1828, the subject was brought before Congress by executive documents, and on May 21 a resolution of the House requested the President to send one or more small vessels to the Pacific and South Seas to examine coasts, islands and reefs, and ascertain their location. The Secretary of the Navy selected the *Peacock*, and in November, 1828, suggested the purchase of another vessel and the selection of instruments and scientific men.

In February, 1829, the House still urged the expedition, and the Secretary of the Navy, in a document sent to that body, stated that the object was to examine islands and coasts, "both known and unknown," as far south as circumstances, safety and prudence would permit explorations, and that an additional appropriation would be needed.<sup>3</sup>

The Senate, to which the House resolution had never been submitted, feeling that the expedition would be expensive and was related to the foreign policy, favored delay and investigation, and hoped that the Secretary of the Navy

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<sup>1</sup> H. Exec. Doc. 88, 20-1, vol. iii, Jan. 22, 1828.

<sup>2</sup> H. Exec. Docs. 179 and 201, 20-1, vol. v, Feb. and March, 1828.

<sup>3</sup> Sen. Exec. Doc. 77, 20-2, Feb. 16, 1829.

would never again feel justified to act upon the resolution of the House alone. The Senate committee, considering the wide unsettled and unexplored regions at home, saw nothing in the condition of the United States to recommend distant voyages of exploration, and feared that the discovery of countless islands or new continents might result in the evils of adventure, visionary hopes and large emigration, tending to urge us "to plant the American standard on soil discovered by American enterprise," and, perhaps, to establish distant and expensive colonies, "which could only be defended at an expense not to be estimated, and which could not be taken under the protection of the United States without an abandonment of the fundamental principles of our policy, and a departure from those wise and prudent maxims which have hitherto restrained us from forming unnecessary connexions abroad."

The majority of the committee thought that before venturing upon a premature expedition to distant seas, where even to survey the 200 known islands would be a large undertaking, the Government should make accurate surveys of our coasts. Though they held that the opening of new sources to commerce, as well as agriculture, might safely be left to the enterprise and instinctive sagacity of individuals, they favored a small expedition to make surveys in the track of our vessels in the Pacific."

After sailing to the Pacific and circumnavigating the globe, Reynolds returned to the United States in 1834, and prepared to renew his project in Congress. Collecting information which he had received from the whalers,<sup>10</sup> he proposed exploration on both sides of the equator from South America to Asia, and southward beyond previous discoveries. (Captain Cook had been stopped by ice at 68° south latitude, but Captain Palmer and other Americans had

<sup>10</sup> Sen. Rp. 94, 20-2, Feb. 23, 1829. Mrs. A. E. Carrell, on the "First American Exploring Expedition," in Harper's Mag., vol. xlv, Dec., 1871.

<sup>11</sup> Exec. Doc. 105, 23-2, Jan. 24, 1835.

gone beyond that in search of furs and seals.) J. Q. Adams led the House in favor of the expedition, and an act of Congress, May 14, 1835, authorized it. Many thought the expedition should be scientific, and that it might throw some light on the source of the American aborigines. Some opposed the enterprise on the ground that it was an eastern measure, and a visionary one.<sup>12</sup> Hawes, of Kentucky (May 5, 1836) compared it to the establishment of light-houses in the skies, and said, if it passed, he expected a proposition for a voyage to the moon next. Others urged that it was for the general interest. Though Jackson favored the expedition, his Secretary of the Navy, Dickerson, did not, and during the three years of preparation Russia sent out three expeditions.

Reynolds continued to urge that the United States should increase our knowledge of the Pacific<sup>13</sup> in order to render less hazardous the voyages of our hardy sailors upon the rock-chafed billows of seas only partially explored, and in unfrequented bays of barbarous natives. Of the coast of Sumatra, where many of our vessels sailed and where we had recently sent the *Potomac* to punish the natives who had captured the American *Friendship*, we had no charts; nor had we any of the Fijis, where several of our ships had been lost and men slaughtered. In the vicinity of the Society, New Caledonia and Solomon's Islands, where we had over 200 whale ships, there was much danger of shipwreck. The stories of lost mariners were not fictions. Almost every arrival from the Pacific<sup>14</sup> brought some news of shipwreck, mutiny or massacre. Even at the Friendly Islands captains had been seized in order to exact ransoms, and the presence of a man-of-war seemed to be necessary to protect seamen who had never received any bounties, but who, as children of the sea, might be called to bear a double share

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<sup>12</sup> Cong. Globe, May 9, 1836.

<sup>13</sup> J. N. Reynolds' Address, Apr. 3, 1836.

<sup>14</sup> In 1837 it was estimated that the United States had 460 vessels in the Pacific. This was one-tenth of all our tonnage.

of usefulness in some great ocean conflict of the future. The United States squadron on the Pacific coasts at this time consisted only of one frigate, two sloops and a schooner. Reynolds considered that a judicious exhibition of a stronger force, together with a humane policy, was necessary to gain the confidence of the natives."

Those who urged the expedition proposed that it should have the following purposes:"

1. To note accurately the position of islands and harbors and rocks along the paths of United States whalers and traders.

2. To release from the islands unhappy captives left there by wrecks.

3. To suppress misconduct on American vessels, prevent mutiny and desertions, and endeavor to end cruelty, licentiousness and extortion in the islands.

4. Look for land in the South polar seas.

5. Collect specimens and facts to subserve the advancement of science in natural history, linguistics, etc.

Leaders in Navy Department circles held that it would encroach upon the rights of naval officers for a corps of scientific citizens to accompany the expedition. Many obstacles were presented to defeat the object of the enterprise. The people were told that it would be expensive, confer no benefit upon commerce, and that it aimed at nothing but to explore Antarctic icebergs. The Navy Department decided Reynolds should not accompany the expedition, and taking advantage of the crisis of 1837, convoked a

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"On June 11, 1836, Benjamin Rodman, of New Bedford, in a letter to J. N. Reynolds, referring to the advantages which the expedition would have upon our marine colonies, said: "Why should we have governors, judges, and all the paraphernalia of courts in territories where there is a bare possibility that an Indian may be murdered, or become a murderer, steal a horse or have his horse stolen; and not have a superintending influence abroad, where our ships are daily traversing from island to island . . . that the savage may be awed into respect, and the mutineer's hand bound in submission?"

"N. Am. Rev., Oct., 1837.

new commission to cut down the force. Jones, who was to have commanded the expedition, resigned; Shubrick declined to take his place; Kearney was prevented from accepting the command; Captain Gregory, being a friend of Reynolds, declined, and Wilkes, who had been in Europe making purchases of instruments, was appointed over the heads of his fellow-officers.

The expedition was finally organized in 1838." Its purpose was purely "scientific and useful," though several scientific men were not permitted to sail with it." It was divested of all military character, the armament being adopted merely for necessary defence against natives, while engaged in surveys, and not adopted with views of conquest or war. There were six vessels in the squadron:"

The <i>Vincennes</i> , sloop-of-war . . . . .	780 tons	
" <i>Peacock</i> , sloop-of-war . . . . .	650	"
" <i>Porpoise</i> , gun-brig . . . . .	230	"
" <i>Relief</i> , slow-going store ship.		
" <i>Sea Gull</i> , New York pilot-boat. . . . .	110	"
" <i>Flying Fish</i> , New York pilot-boat. 96		"

} tenders.

Wilkes was directed by his instructions to determine the longitude of Rio Janeiro, examine the resources of Rio Negro, make researches at Terra del Fuego, explore the South Antarctic between Powell's group and Palmer's Land, sail to Cook's *ne plus ultra* in 105 west longitude, return to Valparaiso for supplies, visit the Society Islands, verify the position of certain shoals in the Navigators' group, examine the Fijis with a view to the selection of a harbor for whaling vessels, go to Sydney and from there make a second attempt to penetrate within the Antarctic circle south of Van Dieman's Land, and after returning to the Sandwich Islands for more stores, to explore along the Columbia river and

" Exec. Doc. 147, 25-2, vol. vii, Feb. 5, 1838. 630 pp. with good alphabetical index.

" For the sake of harmony, Reynolds was not allowed to go.

" Exec. Doc. 255, 25-2, vol. viii, Mar. 16, 1838.

California, then direct his course to Japan, endeavor to find a safe route through the Sulu sea which would shorten the route of our vessels to China during the season of contrary monsoons (and facilitate our navigation with the Philippines) and return to the United States via the Straits of Billiton, Singapore, and the Cape of Good Hope."

Before reaching the Pacific Wilkes stopped at Madeira, made a brief stay at St. Iago, of the Cape Verde group, and remained at Rio six weeks for repairs and to replace inferior supplies. The passage around Cape Horn was dangerous and the *Sea Gull* was lost. On April 14 the *Relief* reached Valparaiso. In May the *Vincennes* and *Peacock* arrived. The squadron next stopped in Callao, the harbor of Lima. The *Relief* then went to the Sandwich Islands and to Sydney carrying supplies. Wilkes, with other vessels, went to the Poumotu group (Low Archipelago or Tuomata). A month later he reached Minerva Island (Clermont Tonnerre) of the same group and began the study of corals. The few natives seen gave no welcome, and apparently did not want to be discovered. "Go to your lands," said they, "this belongs to us and we do not want to have anything to do with you."

Tahiti, where Cook observed the transit of Venus in 1769, was the next rendezvous. American, British and French consuls lived there (also missionaries), and whaling vessels often came for supplies. The natives brought a profusion of pigs, cocoanuts and bananas. Owing to the clamorous press of natives, only *great* chiefs were permitted to come aboard.<sup>21</sup> The latter came to solicit laundry work. While surveys were being made the scientists studied the geological formations of the island. Wilkes found it necessary to protest against illicit trade and excessive use of intoxicants.

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<sup>21</sup> Synopsis of the Wilkes Expedition, Washington, 1842.

<sup>22</sup> Women were not allowed to come on the ship at night, as they had evidently been accustomed to do with other vessels.



After a visit to Eimeo, Wilkes sailed to the Samoan Islands and surveyed and mapped them as he had Tahiti. At Oloosinga he dined with the king, and not understanding Samoan etiquette, came near creating a disturbance by showing the same courtesy to a kanaka (common) as he did to the king. He surveyed Pango Pango harbor, of Tutuila, and the Bay of Apia, of Upolu. The council of chiefs of the Malo party, in the presence of the naval officers and missionaries (November 5, 1839), agreed to rules and regulations for protection of foreign consuls, vessels and seamen, the apprehension of deserters, prohibition of all trade in spirituous liquors, and all work on Sunday, except when absolutely necessary, and regulating landing anchorage and pilotage. For a dangerous renegade that the United States desired, a large reward was offered.

From Apia, Wilkes sailed to Sydney via Fijis, and after examining into social problems and penal colonies, prepared to explore in the polar ice-fields. Leaving the scientific corps, he started on a voyage of two and one-half months, and on January 16, 1840, discovered land within the Antarctic circle.<sup>22</sup> After completing repairs at Sydney, he went to New Zealand and witnessed native war dances, but was not interested in what he saw there. On reaching the Tonga (Friendly) group he found the natives quarrelling and trying to annex neighbors' territory, and he attempted to reconcile the parties.

At the Fijis, where he lost two officers through the treacherous character of the cannibalistic natives, he obtained (June 10, 1840) the signatures of eleven kings and chiefs to the agreement concerning rules and regulations previously accepted by Samoan chiefs.<sup>23</sup>

At the Sandwich Islands (October, 1840) he received information from the United States. He was impressed

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<sup>22</sup> U. S. Exploring Expedition, vol. ii, chaps. ix and x.

<sup>23</sup> G. M. Colvocoresses: *Four years in a Government Expedition*, 1838-42. N. Y., 1852.

with the good influence of the missionaries in the transformation of the natives. After a brief rest, the *Vincennes* and *Porpoise* were directed toward the coast of Oregon, and the *Peacock* sailed to the Phoenix group, Samoa, Ellice and Kingsmill groups, and then via Honolulu to the Oregon coast, where it was wrecked.\*

Returning to Hawaii in October, 1841, Wilkes sailed to Manila \* and made observations in the interior of Luzon. Of the Sulu sea he made surveys and charts, and, at Sohung, obtained a treaty (a promise) from the Sultan, guaranteeing protection to all United States vessels visiting his dominion. Reaching Singapore in February, 1842, he sailed home via Cape of Good Hope, with a cargo of plants and seeds, from the South Seas, which formed the nucleus of the Botanical Gardens at Washington.

Soon after his return to the United States, Wilkes was arraigned before a court-martial on charges of oppression, injustice to his men, illegal and severe punishment of merciless savages, falsehood and scandalous conduct, but he was acquitted after an investigation of six weeks." In his own report of the expedition, Wilkes said: "I shall always have the proud and conscientious feeling of having done my duty; and that I have carried the moral influence of our country wherever our flag has waved."

The Wilkes expedition was followed by exploring expeditions to other parts of the world: Lynch to the Dead sea, Fremont to California, and Dr. Kane to the Arctic regions. The second national enterprise by the United States in the Pacific was undertaken in 1853, under the direction of Commander Cadwallader Ringgold, and its purpose was to make explorations and meteorological observations in Behring sea, the Japan sea, the Yellow sea,

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\* U. S. Exploring Expedition, vol. v.

\* His report of the expedition gives a summary of the history of Manila.

\* Navy Dept. Tracts, vol. xiv, No. 25. Wilkes: Antarctic Exploration. [Letter to Washington Union, Aug. 12, 1847.]

and the Japan, Kurile, Aleutian and Bonin Islands<sup>22</sup> in the interests of commerce, and for the welfare and protection of the many American citizens who were engaged in the whale fisheries. It consisted of five vessels: the *Vincennes*, the steamer *John Hancock*, the brig *Porpoise*, the tender *J. Fenimore Cooper*, and the *John P. Kennedy*. Important surveys in the North Pacific were conducted under the command of John Rodgers<sup>23</sup>. The increasing importance of South America, the interesting islands to the westward, and California and Oregon, induced the Secretary of the Navy, in December, 1856, to recommend that the regular Pacific force should be supplemented by a second squadron.<sup>24</sup>

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<sup>22</sup> F. D. Stuart: Journal of a cruise of the U. S. Ship *Vincennes*. [In MS. at Navy Department.]

<sup>23</sup> Rep. of Secy. of Navy, Dec. 3, 1855. Lieut. A. W. Habersham: *My Last Cruise*. Phila., 1857.

<sup>24</sup> In 1855, the regular Pacific squadron cruised in the vicinity of Astoria, Hawaii, Fiji, Mexico, and Chile. In December, 1855, the Secretary of the Navy announced that a vessel would soon be sent to correct irregularities of the natives in the Marquesas group.

## CHAPTER VI.

### COLONIAL ESTABLISHMENTS.

#### THE PORT LLOYD COLONY IN THE BONIN ISLANDS.

Among the many American pioneers in the Pacific who for over a century, with silent and persevering efforts, have led in a movement of whose magnitude they scarcely dreamed, there were some who long ago had views of establishing settlements or securing advantageous stations on islands in the Far East.<sup>1</sup> Delano, who sailed from Boston

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<sup>1</sup> Others were interested in establishments on islands nearer to the American coast of the Pacific.

In 1813, Captain D. Porter, asserting American rights by discovery, conquest and possession, and "influenced by humanity" and the request of the friendly natives, as well as by views of national policy, and the immediate need of security and supplies for his vessels, formally took possession of Madison Island, of the Washington group, and took steps to hold it.

In 1832, Governor J. Vilomil, a native of Louisiana, established on Charles Island, of the Galapagos group, a colony which he had long projected. In 1811, he thought of applying to Spain for permission to make the settlement, but heard that Spain would probably not permit it. When Colombia established its independence he again contemplated his colony, but his friends discouraged him and kept him inactive until 1820 when, influenced by the death of his wife and two children, and tired of society, he petitioned for a charter which, granted in 1831, conceded the possession of the islands and authorized the establishment of a colony. Colonel Hernandez and twelve colonists who, in January, 1832, were sent to take possession, were followed in April and June by both men and women, and, in October, by Governor Vilomil and eighty others. They labored with zeal, and soon the productions of the island were enough for several hundred more inhabitants. Governor Vilomil, who, seated upon his rock, exercised almost absolute power, under the severest penalties prohibited the introduction of liquors, and administered severe punishments when they were considered necessary to teach the colonists that their true

as second officer on the *Massachusetts*, March, 1790, left the vessel at Macao and entered English service under Commodore McClure, who planned and began a romantic project of making an establishment on the Pelew Islands.

In 1834 Captain Morrell visited some small islands of the Admiralty and other groups, which he had intentions of colonizing with a party of young men and women from the United States.<sup>2</sup>

In 1832, five white persons,<sup>3</sup> with a small party of natives, sailed from the Sandwich Islands to establish a colony on Peel Island, one of the uninhabited, picturesque Bonin group, 500 miles from Japan. Having tried and become tired of various climes, they sighed for a far-off isolated island where they "could love as they loved in the golden time." They had been informed by Charlton, the British consul, that the islands had waters abounding in fish and turtle, woods full of game, shores with safe harbors, and fertile valleys green with verdure and capable of yielding rich returns. On reaching Port Lloyd with their stock and garden seeds, and the British flag, they found that they had been misled, but saw that it was too late to return. The beautiful scenery—bays, valleys, ravines, natural tunnels, and wide-spreading trees—were attractive, but Mazarra saw nothing to invite permanent settlement, and his party soon found that in this Far West men must work, and that waters reflecting the bright stars on silent nights were frequently tossed by typhoons, earthquakes and irregular winds.

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interests were peace among themselves and justice towards the people of visiting vessels. Though appointed United States consul at Guayaquil, he declined the position, stating that he could be of more service as governor of his colony, and that his enterprise would be valuable to at least one branch of American commerce. J. N. Reynolds visited the island in 1833 and said it might soon become very important to the whaling interests of the United States in the Pacific where a new and extensive world was opening to the people of the West.

<sup>2</sup> See p. 45.

<sup>3</sup> They were: Matthew Mazarra, a Genoese; A. B. Chapman and Nathaniel Savory, of Massachusetts; Richard Millechamp, of England; and Charles Johnson, of Denmark.

The group had been discovered as early as 1675 by the Japanese. In 1823, Captain Coffin, of the American whaler *Transit*, had visited one of the islands and given his name to it. An English whaler, *William*, had visited the harbor in 1826 and was lost by neglect. In 1827, Captain Beechey, of the British vessel *Blossom*, had taken possession of Peel Island. The convenient intermediary position of the group for watching the trade with China, the Philippines and Russia was not fully seen at that day.

The settlers built snugly thatched, comfortable cabins and prepared to furnish supplies for passing whalers, but their life was by no means peaceful. Dissensions arose. The whaler *Cadmus*, in 1833, left fifteen refractory seamen, who defiantly committed outrages. In 1836 the settlers agreed to a written code called "The laws of the Bonin Islands," which was posted on the wall of the dwelling of Mr. Chapin, who had a library of fifty or sixty books and was characterized as polite and intelligent. This code provided that all disputes should be settled by the opinion of the majority; that none should sell turtle or aid vessels in getting it; that none should maltreat another's slaves or servants or endeavor to seduce any woman from her lord; and that none should encourage or aid desertions from ships. Later in the same year, an American vessel on a voyage around the world, stopped at the settlement. Ruschenberger has given us a picture of the people at the time. There were then nineteen women on the island. The morality of the community was of a low grade, and religion was out of the question. Infanticide and infidelity were common. Both men and women lounged on rough-hewn logs in the shade, abandoning all work and devoting their time to the consumption of three barrels of New England rum which had just been received, the first they had had for nearly a year.<sup>4</sup>

After Millechamp returned to England, the task of gov-

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<sup>4</sup> Ruschenberger: *Voyage Around the World*, 1836-37. Chap. xli. Phila., 1838.

erning the little colony devolved upon Mazarra, who, in 1842, returned to the Sandwich Islands in an English whaler to encourage additional settlers and laborers to emigrate. He also obtained from Alexander Simpson, the British consul, such recognition as he felt necessary to establish his authority. Though there were then only twenty persons in the small colony, he had found it no easy matter to govern. Simpson drew up a paper requesting that Mazarra should be considered the head of the colony until he should be replaced by some officer appointed directly by Her Majesty.

The events of the next few years placed Savory at the head of the colony. Millechamp returned to the Pacific, but took up his residence in Guam. Mazarra died, leaving a young widow, a pretty native of Guam. Savory married the widow, began to rear a family, and became the patriarchal magistrate. Cultivating his little farm, he sold to whalers the sweet potatoes which he raised and the rum which he distilled from sugar cane. He made considerable money, which he deposited in the ground; but one day he became too confidential and friendly with visitors from a schooner carrying the American flag, who carried away his money and his journal, taking with them also two women of his household, who afterwards declared, at Honolulu, they had no desire to return.

In 1853, Perry visited the settlement while on his expedition to Japan.\* He found a population of thirty-one, of whom eight were whites, who had chosen good-natured wives from the Sandwich Islands emigrants. The people seemed happy and contented; they cultivated sweet potatoes, corn, pumpkins, onions, taro, watermelons, bananas and pineapples; they raised enough sugar and tobacco for their own consumption. Seeing the importance of the islands to commerce, between California and China, he made explorations, distributed seeds, left live stock and various

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\* Japan Expedition, vol. i, p. 201.

implements of husbandry, and purchased from Savory the title to a piece of land suitably located for the construction of buildings for a naval depot.\* In a report to the Secretary of the Navy, on June 25, he said if the Department desired he would take possession in the name of the United States. The inhabitants practically disowned the sovereignty of England, hoisting the British flag only as a signal on the arrival of a vessel. They recognized that they were able to take care of themselves and needed no foreign control.'

After Perry left, the settlers, following his suggestion and advice, met in convention at Savory's house and established a form of municipal government for the colony of Peel Island, electing Savory chief magistrate. The magistrate, acting with the two councilmen, who were also elected by the convention, were to serve for two years, and were given authority to make such rules and regulations as they should consider necessary for the public good. Such laws required the approval of two-thirds of the whole number of residents. Two pilots for the port were selected by unanimous vote and given authority to appoint capable substitutes. Among other regulations was one against the discharge of crews by captains when in the port. Another prohibited the enticing or secretion of deserters, placing the fine at \$50. All penalties were to be pecuniary. The magistrate was to be the final court for all claims and disputes. He and the council were given power to direct the seizure and sale of any property of any offender, sufficient to liquidate fines against such offender. All fines were to constitute a public fund, kept by the chief magistrate and appropriated as he and the council might deem proper, but a published statement was to be made each year. At the end of each year, all unexpended moneys were to be equally divided, unless otherwise ordained by the convention. The

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\* Japan Expedition, vol. i, p. 211; vol. ii, pp. 127-33.

' Japan Expedition, vol. i, pp. 199-200.



magistrate and council were authorized, whenever they should consider it necessary, to call a convention of the people to amend or increase the laws.

In December, 1853, at Hong Kong, just before leaving for Japan, Perry was surprised to learn from Sir George Bonham, the English superintendent of trade, that his visit to the Bonins and his purchase of a coal depot had attracted the attention of Lord Clarendon, of the British Government, who, acting on a statement of Alexander Simpson, who had once been the British representative in the South Seas, gave instructions to ask some explanations.<sup>9</sup> In reply, while expressing his doubt of the right of Great Britain to claim sovereignty, Perry stated that the purchase of land was of a strictly private character, and without any instructions from Washington. The question of sovereignty he was willing to leave "to be discussed hereafter."<sup>10</sup>

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<sup>9</sup> Japan Expedition, vol. i, p. 203.

<sup>10</sup> Perry favored colonies in those distant regions.

While at Maderia, en route to Japan to negotiate for commercial relations, safe harbors, and coaling stations, Perry (on Dec. 14, 1852,) wrote the Secretary of the Navy that as a preliminary step the United States should at once secure ports of refuge and supply on islands south of Japan, and conciliate the inhabitants so that our friendly purposes might be better understood by the Japanese Government. He suggested that the occupation of the principal ports of the Loo Choo Islands for the accommodation of warships and merchant vessels would be justified by the rules of moral law and necessity, and by the amelioration of the condition of the natives whom the Prince of Satsuma ruled by fear rather than by power to coerce obedience. Great Britain already held the most important points in the East India and Chinese seas. Perry, therefore, thought the United States should lose no time in adopting active measures to secure ports in the islands that fortunately were still left. [Sen. Exec. Doc. 34, 33-2, pp. 12-15.]

The President concurred in Perry's opinion, and Secretary Everett (Feb. 15, 1853) gave instructions to secure ports either in the Japanese islands or elsewhere, but to use no force except in the last resort. [Ibid., p. 15.] On Jan. 25, 1854, Perry, while at Napa in Great Loo Choo, wrote Secretary Dobbin of the navy that, in case of failure to negotiate with Japan, it was his aim "to take under the *surveillance* of the American flag, upon the ground of reclamation for insults and injuries committed upon American

Desiring to consummate an arrangement to fill up the remaining link of a great mail route of the world, he considered that the question of sovereignty was not so important as that of an open door for the hospitable reception of all nations. At another time, speaking on the extension of American trade in the East, he said: "What benefits the commerce of the United States and extends American territory cannot but result advantageously to other powers."<sup>16</sup>

Perry's plan was to secure the organization of a stock company of merchants and artisans, to send two vessels laden with building materials and supplies for whalers and naval vessels, and as trade grew up, to send out young married people, gradually building up a thrifty community which would extend over the entire group and perhaps send missionaries to Japan, Formosa "and other benighted countries."<sup>17</sup>

Contemplating British rivalry in maritime enterprise, he had often suggested that commercial settlements in China and Pacific waters would be vitally necessary to the continued success of American commerce in those regions, but considered it unadvisable to erect for these settlements any defences except such as were necessary for protection against pirates and common marauders.<sup>18</sup> After the success of his Japan expedition, speaking of the tendency to seek

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citizens, this island of Great Loo Choo." The people seemed friendly, and he intimated that they should not be abandoned "as found, defenceless and overburdened." The President, however, feeling that such a course might prove embarrassing, was "disinclined, without authority of Congress, to take and retain possession of an island in that distant country," unless demanded by more potent reasons. Secretary Dobbin wrote (May 23, 1854) in reply: "If, in future, resistance should be offered and threatened, it would also be rather mortifying to surrender the island, if once seized." He approved Perry's suggestions as to the establishment of a coal depot at Port Lloyd, however, and also his correspondence with Bonham, as to the sovereignty of the Bonins. [Sen. Exec. Doc. 34, 33-2, p. 112.]

<sup>16</sup> Japan Expedition, vol. ii, p. 180.

<sup>17</sup> Japan Expedition, vol. i, p. 212.

<sup>18</sup> Sen. Exec. Doc. 34, 33-2, Perry to Secy. of Navy, Dec. 14, 1852.

further expansion, he said: "Perhaps we cannot change the course of events, or avert our ultimate destiny. . . . It belongs to us to act honorably and justly . . . and to encourage changes in the political condition of Japan, China, and especially Formosa." He urged that in Formosa," whose commanding position resembled that of Cuba, there should be an American commercial settlement from which communication might be established with China, Japan, Loo Choo, Cochin China, Cambodia, Siam and the Philippines. He quoted with approval the statement that colonies are as necessary to a commercial nation as ships and that it would be difficult for any government to prevent the establishment, in distant regions, of trading or religious settlements which would naturally grow into flourishing and self-governing communities.

The British consul at Yokohama, who visited Port Lloyd, in 1875, said Perry's code of government for the Bonins was never enforced, and soon forgotten. In the years following 1854, whalers and men-of-war visited the island occasionally, but the conditions were not favorable to rapid increase of population. In 1861, Japan made an effort to colonize Peel Island by sending 100 colonists from Yedo, but soon wearied of the scheme, and by 1863 all her settlers had withdrawn, leaving only a stone stating that the islands were discovered by Japan and were still her property.

By 1875 the community at Port Lloyd numbered 69—37 male and 32 female, 20 being children, but only 5 were entirely white. The settlers, with their few wants supplied by whalers, still lived in rudely-constructed, sparsely-furnished cottages in sheltered nooks, cultivated patches of

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<sup>22</sup> In Feb. 1857, Parker, the United States Commissioner in China suggested the policy of occupying Formosa. In his despatch to the Department of State he enclosed a letter from Gideon Nye, Jr., who urged occupation in the interest of humanity and commerce, and offered to assist in colonizing the island, if the United States would protect him. Sen. Exec. Doc. 22, 35-2, exhibit G., pp. 1203-04.

sugar cane and maize, raised pigs, geese and ducks, and caught turtle. They appeared to live in decency and order, and to be comfortable, but they had no thought of religion, and with the exception of one person, could not read or write. Life had often been insecure among them, eleven men having met violent deaths within twenty-five years. The settlers had a repugnance to settled government. Though the American flag was displayed from one of the huts, the American Government apparently had no idea of taking possession. By the opening of Japan to the world the Bonins became less important. They were left to the southward of the steamer line routes between the United States and the Orient, Yokohama being a more convenient and more desirable station. Mr. Robertson, the British consul at Yokohama, who visited Port Lloyd in 1875, proposed that Great Britain should take the Bonins beneath her sheltering wings, initiate some simple inexpensive form of government there, and attempt to guide the young settlement through its early perils.<sup>14</sup> Japan then seemed unable to colonize Yesso, right at her doors, but in 1878 she took undisputed possession of the whole Bonin group.

The United States, especially after the ratification of the treaty with Japan, probably had no desire to enter into discussion regarding questions of title to an island so far distant.<sup>15</sup> In 1835, Edmund Roberts, who had succeeded in negotiating a treaty with Siam, was instructed to endeavor studiously to inculcate upon all (including Japan) the idea that the United States, though strong and resourceful, had a history indicating no ambition for conquest and no desire for colonial possessions, and a policy whose essential part was to avoid political connection with any other government.<sup>16</sup>

Wilkes, during his explorations in 1841, had surveyed

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<sup>14</sup> Chambers' Journal, July 5, 1879.

<sup>15</sup> See p. 52; also Senate Doc. 77, 20-2, February 16, 1829.

<sup>16</sup> 1 Sp. M. 131.

Wake Island (19 N. lat., 166 E. long.) and asserted title, but the United States Navy never took possession." Webster, in June, 1852, agreed to send a naval vessel to protect American guano interests on the Lobos Islands which were not occupied by any of the South American States, and had been visited by American fishermen for half a century, but he decided to yield to the protests of Peru, who declared her ownership had never been questioned before." Under an act of Congress of August 18, 1856, conferring discretionary power on the President to assume the ownership of guano islands discovered by United States citizens," Commander Davis, of the *St. Mary's*, sailed from the coasts of Central America in 1858 and took formal possession of Jarvis and Nantucket islands in the name of the United States, and deposited in the earth a declaration to that effect. Lieutenant Brooke, in the next year, took possession of Bird and Necker islands, near the Hawaiian group." In October, 1858, Cakobau, the principal chief of Bau, and also king of the whole Fiji group, in a document offering the sovereignty to Queen Victoria," declared that his action was

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"The United States took possession of Wake Island, in January, 1899, with a view to using it as a station on a cable-telegraph line between Hawaii and the Philippines.

"Sen. Exec. Rp. 109, 32-1, Aug. 21, 1852.

"Under this act the United States, in 1898, owned 57 islands and groups of islands in the Pacific, and 13 in the Caribbean sea.

"Report Secy. of Navy, Dec. 2, 1859.

"This deed of cession was ratified, and signed by 21 chiefs on December 14, 1859, and by others in August and September. The legislative assembly of New South Wales recommended the acceptance of the proffered sovereignty, and captains in the British navy recommended occupation, but after sending Dr. B. Seemann to secure further information, the British Government decided to decline the offer. Seemann reported that the islands would become a flourishing colony. American whaleships which had been getting supplies at Samoa or Tonga were now beginning to go to Fiji on account of the exorbitant prices recently asked by the natives of the former islands. [Berthold Seemann: Viti, Cambridge, Eng., 1862.] In 1864, an attempt was made to establish a regular government based on English models, but was not a success. Meanwhile the rumor went that the United States intended to

for the purpose of preventing severe measures threatened by the United States against the king and the sovereignty and the territory of the islands in case of the non-payment of a debt of \$45,000<sup>22</sup> which, under the existing state of affairs in the islands,<sup>23</sup> he would not be able to collect within the brief time stated in the contract.

In 1867, by the acquisition of Alaska, the United States became the owner of the Aleutian Islands, extending almost to the Asiatic coasts. On August 28 of the same year, Captain Reynolds, by order of the United States Navy, occupied the Midway Islands [28° 12' north lat., 177° 22' west long.] which had been discovered by Captain N. C. Brooks on July 5, 1859, and first occupied by the Pacific Mail Steamship Company in July, 1867.<sup>24</sup> The Senate Committee, in January, 1869, for both political and commercial reasons, favored making a naval station there, stating that the United States should have at least one harbor of refuge on the route to China, and should prevent the possibility of European occupation of any island which, under their control, might become another Nassau. The Secretary of the Navy, in his report of the previous December, had

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assume the protectorate. In 1869, Lord Granville considered that there would be "more disadvantage in Great Britain taking the responsibility of the government of Fiji than in the risk of the United States assuming the Protectorate." [Parl. Papers, 1875.] But the Australian colonies at the Conference of 1870 called for British annexation, and Lord Kimberly decided to send a commission to report. The report of Commander Goodenough and Mr. Layard was strongly in favor of annexation. The cession was accepted in October, 1874, and the islands were organized as a crown colony with Sir Arthur Gordon as Governor.

[Egerton: History of English Colonial Policy, p. 396.]

<sup>22</sup> Quarterly Review, July, 1859, p. 203.

<sup>23</sup> The Fijis, which had become the resort of the European trader, "threatened to become an anarchic Hell." [Egerton: History of English Colonial Policy, p. 396.]

The natives, however, were not such ferocious cannibals as they had formerly been. [Quarterly Review, July, 1859, p. 203.]

<sup>24</sup> Senate Rp. 194, 40-3, Jan. 28, 1869. Sen. Exec. Doc. 79, 40-2. Report of Secy. of the Navy, 1870, p. 8, and 1871, pp. 6, 7 and 8.

said the rapid increase of Pacific commerce and of American interests springing up in connection with our recent extensive acquisitions, our rising States on the Pacific, ever-increasing intimacy with the islands of the ocean, made the United States interested beyond any other power in giving security to mariners in the Pacific. On March 1, 1869, the sum of \$50,000 was appropriated for opening a harbor at Midway; but, after spending that amount, it was seen that \$400,000 would be required, and the plan was abandoned. The United States, however, still owns the island.

## CHAPTER VII.

### UNLOCKING THE GATES OF THE ORIENT.

Until a comparatively recent date, the Orient remained a sealed mystery to the nations of Western civilization and progress.<sup>1</sup> It was only by the persistent and increasingly determined efforts of foreigners that Japan was finally induced to open her doors and windows. China, assuming an arrogant supremacy, though she had permitted a limited trade, endeavored to erect barriers of exclusiveness, but was finally forced to be more liberal in commercial relations, and slowly extended her intercourse with the younger and more progressive nations of the West.

**Japan.**—The Japanese policy from 1637<sup>2</sup> to 1854 was one of exclusion and inclusion—to keep the world out and the Japanese at home—and the Dutch factory at Deshema of Nagasaki was the only window or loophole of observation during that time. All attempts by foreigners to secure trading advantages were successfully resisted. The strict isolation of Japan, closing her eyes to keep out the light of the universe, and refusing to open her arms to the West,

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<sup>1</sup> Humboldt once said that the narrow neck of land forming the isthmus of Panama had been the "bulwark of the independence of China and Japan."

<sup>2</sup> Between 1542 and 1600 Christian missionaries exerted considerable influence in Japan. By 1581 there were 200 churches and 150,000 converts. A few years later the rivalry of the opposing orders, the Spanish Jesuits and the Portuguese Franciscans, created animosities, and resulted in persecution by the Japanese. At the battle of Sekigahara, in 1600, in which 10,000 lives were lost, the Christian army (of Southern Japan) was defeated. A reactionary policy of the conservatives followed, and an edict of 1606 prohibited Christianity. The last Christian uprising was defeated in 1636.



provoked American enterprise which elsewhere had been mastering opposition. As early as 1815 Commodore Porter proposed an expedition to open trade, and Monroe intended to send him, but the plans were never matured.<sup>5</sup>

In 1832 (as previously stated), just after the plunder of the American ship *Friendship* at Quallah Battoo, Captain Edmund Roberts,<sup>6</sup> who had been well acquainted with the commerce of the Far East, was sent as United States confidential agent to negotiate for treaties.<sup>7</sup> He was instructed to proceed to Japan to open trade, in case he found prospects favorable, but he was directed not to enter the country until he should receive assurance that nothing unbecoming the dignity of the United States would be required. Though he succeeded in securing a treaty with Siam<sup>8</sup> and the Sultan

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<sup>5</sup> De Bow's, Dec., 1852. In 1797, the *Elisa* of New York, carrying the American flag with seventeen stars, sailed to Nagasaki, under the command of Capt. Steward, but did not open trade. Capt. John Derby, of Salem, Mass., soon made an unsuccessful attempt to open trade. In 1803, Capt. Steward returned to Nagasaki, but found that the Japanese desired no American products except ginseng. The discovery of valuable whale fisheries near the Kurile Islands, and southward, increased the importance of friendly relations with Japan. Soon there began a long story of shipwrecked seamen who were imprisoned by the Japanese. J. Q. Adams denied the right of Japan to remain a hermit nation, but his was "the voice of one crying in the wilderness."

<sup>6</sup> See pp. 48 and 68.

<sup>7</sup> Sen. Exec. Doc. 34, 33-2, Jan. 31, 1855. Sen. Exec. Doc. 59, 32-1, vol. ix, Apr. 8, 1852.

<sup>8</sup> In Siam, with her old and venerable code of crude and incomplete laws, where the creditor still had absolute power over the life and property of the debtor, American commerce had been subject to any pecuniary extortions or other impositions which avarice might inflict. At Bangkok, on March 30, 1833, Roberts, secured a treaty of amity and commerce, nine feet and seven inches long, removing the imposition on imports, releasing debtors from pains and penalties in case they delivered all their property, fixing port charges, allowing American citizens to trade directly with private individuals instead of through the king who had hitherto fixed prices and delayed trade, and obviating the necessity of enormous presents to officials. [Edmund Roberts: Embassy to the Eastern Courts of Cochin China, Siam and Muscat in the Sloop *Peacock*, 1832-34. N. Y., 1837.] A new treaty was

of Muscat, and began negotiations with Cochin China, he did not proceed to Borneo<sup>1</sup> nor to Japan.

In 1837 C. W. King, a merchant, went to Japan in the unarmed *Morrison* to return some shipwrecked Japanese, who had been saved from a junk which had gone ashore near the mouth of the Columbia river in 1831, but his vessel being fired upon at Yedo, he returned without succeeding in his mission.\* The Japanese probably understood that his principal motive was to open commercial intercourse. In 1845 the *Manhattan*, of Sag Harbor, attempting to return several castaways, met with a similar reception. In the same year Zadoc Pratt, of New York, laid before the House a report advising hostility and proposing to send an embassy to Japan and Corea.

The successful negotiation of a treaty with China in 1844 increased the efforts to secure communication with Japan. In 1846 Commodore Biddle, by instructions of May 22,

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negotiated by Mr. Harris in May, 1856, and was ratified by the United States the next year. It was modified in 1867. Relations with Siam have remained undisturbed, the United States enjoying the rights and immunities extended to the most favored nation. In 1884 an agreement regulating the liquor traffic in Siam was concluded.

Roberts had also endeavored to secure a treaty with Cochin China, but after engaging in a protracted correspondence and enduring much Eastern prevarication he failed on account of disagreement as to conventionalities and excessive formalities. But he made a treaty with the Sultan of Muscat, who wrote Andrew Jackson an extravagantly figurative and loving letter. After the Siam treaty had been ratified by the United States Senate in June, 1834, Roberts was sent to exchange ratifications, and renewed negotiations with Cochin China, whose etiquette as to titles he met by a ruse diplomatique, but whose consent to a treaty he was unable to obtain. [W. S. Ruschenberger: *A Voyage Around the World*, including an Embassy to Muscat and Siam, 1836-37. Phila., 1838.] He died at Macao, June 12, 1836.

<sup>1</sup> On June 23, 1850, at Bruni, Joseph Balestier concluded with the Sultan of Borneo a convention of amity, commerce and navigation, securing liberty of residence and trade, protection of United States citizens and shipwrecked seamen, the privilege of extraditionality, and the use of ports for war vessels.

\* Perry: *U. S. Japan Expedition*, vol. i, pp. 47-49.

1845, sailed to Yedo bay and remained ten days, but failed in his peaceful attempt to gain access to the country. He was informed that, by law, no trade could be allowed with any foreign nation except Holland, and that every nation had a right to manage its own affairs in its own way. He received an anonymous, undated communication asking him to depart as soon as possible and to consult his own safety by not appearing again upon the coast. While on board a Japanese junk to receive the official reply, he also received an unpleasant push from a common Japanese soldier. Captain Glynn afterwards (1851) said that Biddle was too lenient.

A. H. Everett, of the United States legation at Macao, who had received full power to negotiate with the Japanese Government, but had transferred it to Biddle, and who still had power to renew the attempt at a treaty in case any new combination of circumstances should increase the prospect of success, wrote Secretary Buchanan on January 5, 1847, that perhaps Biddle's attempt to open negotiations had not been made with sufficient discretion, and had "placed the subject in a rather less favorable position than it stood before."

Americans, following the whale to the far off seas, were sometimes wrecked on the coast of the Kurile Islands, and arrested and cast into Japanese prisons. Even while Biddle was at Yedo bay, though the Japanese did not mention it, it seems that American citizens (from the *Lawrence*, which had been wrecked May 27, 1846) were already in Japanese prisons. After repeated "trials" they were released through the kindness of the Dutch director at Nagasaki. Other sailors from American vessels, having been thrown upon the coasts of Japan in 1848, were imprisoned as spies,\* and some were punished for attempting to escape, or for other insubordination.

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\* On April 14, 1847, the Netherlands' *chargé d'affaires* notified Buchanan that Japan, in 1843 had given warning against the exploration of Japanese coasts.

With the settlement of the Oregon question and the acquisition of California, and a corresponding expansion of opportunity and duty, the United States became more vigilant in guarding American interests in the Pacific, and more determined to break down Oriental exclusiveness. On January 31, 1849, Commander Geisinger, of the United States East India squadron, hearing in Chinese waters that sixteen Americans were imprisoned, sent Commander Glynn with the United States ship *Preble*<sup>10</sup> to demand their release.<sup>11</sup> The Japanese officials first threatened offensive operations, then assumed haughty indifference, and finally tried evasive diplomacy, but they acceded to Glynn's peremptory demand for the immediate delivery of the prisoners.<sup>12</sup>

Glynn, on returning to New York, was enthusiastic in his desire to secure some arrangement which would divert the commerce of half the human family from foreign channels into the bosom of the United States. On February 24, 1851, he wrote Howland and Aspinwall that he had found a strong interest on both sides of the Pacific in favor of establishing a line of steamers between Asia and America; and he suggested that Shanghai should be the terminus, and that an effort should be made to secure coal from Formosa and Japan.<sup>13</sup> He proposed that the United States desiring fuel and depots in Japan, and having good cause for quarrel, should go on with the recent congressional inquiry into the Japanese imprisonment of Americans, ask redress, and compel them to adjust the controversy by

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<sup>10</sup> The *Preble* had sailed from New York in September, 1846, during the Mexican war. She was at Honolulu during the trouble of the French with the Hawaiian Government in November, 1849. Later, at San Francisco, many of her crew were discharged, and others ran for the "gold diggings." She arrived at New York January 2, 1851. [N. Y. Herald, Jan. 3, 1851. In Sen. Exec. Doc. 59, 32-1, Apr. 8, 1852.]

<sup>11</sup> H. Exec. Doc. 84, 31-1, vol. x, Aug. 15, 1850.

<sup>12</sup> Perry: U. S. Japan Expedition, vol. i.

<sup>13</sup> Sen. Exec. Doc. 59, 32-1, vol. 9, p. 59.

granting depot privileges in some Japanese port. Reflecting on the possible necessity of using force, he said: "We could convert their selfish government into a liberal republic in a short time; such an unnatural system would, at the present day, fall to pieces upon the slightest concussion. But it is better to go to work peaceably with them if we can. . . . If I read the signs aright this is the time for action."

On June 10, 1851, Glynn, urging that intercourse with Japan was demanded by the interests of civilization, and should be secured, by peaceable means if possible, or by force if necessary, advised the President to select some naval officers of tact," able to conduct hostile operations if necessary, to bear to the Japanese Government a document that would be a future justification before the world, disclaiming any desire to interfere with internal affairs, and making no complaints for past conduct. He suggested that the Dutch should be conciliated, and that England, who was alarmed at our strides in the East, should be reconciled by the assurance that we were asking Japan for no exclusive privileges.

President Fillmore had already decided, in the interests of commerce and humanity, to send an envoy to make another appeal to Japan for friendly intercourse, and to endeavor to secure coaling facilities for the line of steamers projected by American citizens. On May 10, 1851, he wrote a letter to the emperor, informing him that the United States had expanded to the Pacific; that in order to form the last link in the chain of navigation, American ships must pass near Japanese shores; and that we desired trade, and needed the coal which Providence had deposited in Japan for the human family.

Commodore Aulick, in command of the East Indian naval

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<sup>14</sup> Glynn said Biddle's visit of 1846, was unfavorable to the United States—the Japanese and Loo Choo Islanders having given out exaggerated reports of his chastisement.

forces, was instructed by Webster, on June 10, 1851, as a special (non-missionary) envoy to make an effort to secure from the Japanese the assurance of supplies of coal at fair prices, either in Japanese ports or on some near island easy of access, the right of access for American trading vessels, and the promise of protection of shipwrecked sailors and property. In 1852, his powers were transferred to Commodore Perry.

On November 13, 1852, Commodore M. C. Perry,<sup>28</sup> invested with both naval and diplomatic power, was instructed to go to Japan with an imposing fleet (as a manifestation of power) to state that we sought no interference with religion and we were connected with no European government, and to use all amicable means to secure a treaty of friendship and commerce, but to resort to no force unless in self-defence in protecting his vessels or crews, or to resent acts of personal violence to himself or officers. He was directed to show that our forbearance had not resulted from timidity; and, in case argument failed to secure a treaty, he was to change his tone and inform Japan that American citizens, driven to her coasts by wind and weather, must be treated with humanity. He was to use caution and vigilance, and all journals and private notes of persons in the expedition were considered to be United States property until the Navy Department should give permission to publish them.<sup>29</sup>

The letter which he carried from President Fillmore to the Japanese emperor, urged the necessity of new laws, from time to time, to meet such new conditions of the world as those resulting from American expansion to the Pacific,

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<sup>28</sup> M. C. Perry (1794-1858) had served as a boy in the War of 1812, and against the pirates in the West Indies, and in the capture of Vera Cruz (1847) and belonged to the same combative stock as O. H. Perry, the author of that laconic dispatch: "We have met the enemy and they are ours." His idea was to occupy one of the Loo Choo Islands as a stronghold from which to terrorize Japan, but Fillmore counselled peace.

<sup>29</sup> Sen. Exec. Doc. 34, 33-2, Jan. 31, 1855.

the sudden growth of California, whose trade with the East was rapidly increasing, and the development of steam navigation which required coal depots. "There was a time," said the President, "when the ancient laws of your Imperial Majesty's government were first made." It was suggested that the experiment of trade might at least be tried for five years.

Several persons, including von Siebold, a German, who had been banished from Japan, and was supposed to be employed as a Russian spy, made application to join the expedition in the interests of science, but their applications were refused in the interests of order.

On November 24, with models of American inventions and other articles for presents, Perry sailed from Norfolk via Cape of Good Hope, and on May 4, 1853, he reached Shanghai.

He resolved to act with firmness and decision, and to refuse to meet any but an officer of the highest rank.

At Napa, of the Loo Choo Islands, where he stopped to get provisions and to make explorations, he declined to receive two dignitaries who came alongside his vessel to present their enormous red cards. By the advice of the English missionary, he asked an immediate conference with the chief authority of the islands. On May 28, the regent, with a score of attendants, actively fluttering their fans to reduce their temperature, were received on board the *Susquehanna* with great ceremony and granted the requests to sell provisions, permit surveys, and allow the officers a house on shore. When the officers visited the shore, most of the merchants closed their shops, and the gentry turned upon their heels and disappeared. For the provisions which the natives carried to the ship the officials received the profits. Some of Perry's men, accompanied by Loo Choo spies, whom they walked almost out of breath, explored nearly one-half the island in six days, but they had no opportunity to converse with the people or to see their interior life.

Perry resolved to pay a return visit to the regent in the palace of Sheudi. The regent sent a long diplomatic roll, stating that the "Queen Dowager" had been ill since the visit of the British admiral, who invaded the sacred palace. Perry, expressing deep sorrow, offered to send one of his surgeons to her. Seated in a sedan chair, carried by four "coolies," and accompanied by a gay procession of 200 persons, he went to the palace of the capital. He was met with profound salutations by a throng of officials with flowing robes, fans and umbrellas, and was ushered into the "elevated enclosure [hall] of fragrant festivities" where the Americans received weak tea, "dabs of gingerbread," and tobacco. Then he accompanied the regent into his own private residence where, with chopsticks, they partook of a twelve-course Loo Choo dinner, and drank to the health of the Queen Dowager and son and to the prosperity of the people.

After a brief visit to the Bonin Islands, where he took possession of the Bailey or Coffin group in the name of the United States, and purchased land for a coal depot at Port Lloyd, Perry returned to Loo Choo on June 23 and was surprised to find that the regent, though still in full possession of his faculties, had been deposed and replaced by a younger man. After astonishing the people by exhibitions of the Daguerrotype, telegraph, submarine armor, etc., he sailed away (July 2), feeling that they would be glad to see him return, and that it was his duty to protect them as far as possible against the "vindictiveness of their cruel rulers," who favored exclusiveness.

Sailing to Japan, Perry entered the bay below Yedo on July 8, where his presence, and his refusal to heed the scrolls of warning which minor officials held out before him, created considerable excitement. He refused to go to Nagasaki, insisted upon talking with none but the highest dignitary, and his persistence finally induced the Governor of Urago to apply to the shogun, who, being embarrassed both from without and within, arranged for an official con-



ference on July 14, at which two venerable princes received President Fillmore's letter and presents. Notwithstanding Japanese intimations that it was now time to go, he resolved to go farther up the bay. It seemed that the nearer he approached the imperial city the more polite and friendly the officials became. When he informed Yezaimon and Tatsunoski of his intention to leave on July 17, the latter expressed regret, endeavored to drown their grief in fresh supplies of wine, grew very affectionate, and whispered that all would be well with the President's letter.

Sailing to Hong Kong, Perry refitted his vessels, giving the Japanese time to come to a decision. His return was hastened by the suspicious movements of French and Russian vessels in Eastern seas. He feared that there might be an attempt to forestall the American negotiations, or to obtain a foothold in Japan by lending aid to the latter in case of collision with the Americans. On February 13, passing the Japanese boats, he confidently advanced up Yedo bay to the "American anchorage," where he proposed to meet the Japanese officials. After ten days' "negotiation" he moved near enough to Yedo to hear the striking of the night watches, and obtained the promise of a conference at Yokohama. In a specially prepared "Treaty House," on March 8, 1854, he met five Japanese officials who, with imposing ceremonies, submitted a long roll containing a reply to the President's letter. The shogun had sent copies of the letter to most of the daimios and had received from many of them answers adverse to the opening of the country, but, after prolonged conferences he consented to a favorable treaty which was completed on March 31, and conceded the opening of Shimoda and Hakodate to American vessels. His power was already tottering, and Japan would have been revolutionized from within if she had not been invaded from without.

Perry's treaty far exceeded expectations, and other powers were not slow in securing the advantages which he had gained. A Russian admiral had stopped at Nagasaki in the

latter part of 1853 and demanded a neighborly attitude, the opening of ports, and a settlement of the boundaries of Sagalien. On November 12 he had made a proposition to join forces and cooperate with the Americans, but Perry civilly declined to take any step which might be interpreted as "inconsistent with our policy of abstaining from all alliance with foreign powers."<sup>17</sup> Perhaps a Japanese distrust of the purposes of Russia had some influence in causing the success of the American negotiations. The Dutch, who in 1852, had advised Japan to change its policy of exclusion in favor of all peaceful nations, claimed that they had aided in securing Perry's success, but Perry had never invoked their aid and was not willing to admit their claim.

Having made a good beginning, the United States, in the interests of trade and international relations, and, with a spirit of tolerance, liberality and justice toward Japan, sought new concessions. In 1857 Townsend Harris, who had been residing at Shimoda as United States consul-general, negotiated a treaty enlarging the privileges granted in 1854 and securing the opening of the port of Nagasaki and the right of permanent residence for Americans at the ports of Shimoda and Hakodate. At Yedo, in 1858, without any show of force or compulsion, he won a diplomatic triumph which revolutionized the relations of Japan with the world. By firm, honest diplomacy he concluded with the shogun's ministers a treaty providing for unrestricted commercial relations, diplomatic representation at Yedo, rights of residence, trade at certain ports, regulation of duties, religious freedom and extra-territoriality.<sup>18</sup>

Other powers soon concluded similar treaties. It was agreed that the President, at the request of Japan, would act as mediator between the latter and European powers with whom she might have questions of dispute.

Unfortunately, under the new commercial policy, prices

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<sup>17</sup> Perry: *U. S. Japan Expedition*, vol. i, p. 61.

<sup>18</sup> *Sen. Exec. Doc.* 25, 36-1.

in Japan rose from 100 per cent to 300 per cent. Soon after the beginning of the American war, cotton rose to over 30 cents per pound. The *samurai*, or military class, who suffered most, encouraged the idea that hatred of foreigners was loyalty to Japan. In 1862 the mikado ordered the "barbarians" to be expelled, and summoned the shogun to Kioto to give an account of his stewardship. The shogun, who saw his power declining, and the daimios deserting him to flock to Kioto, was induced through pressure to proclaim to foreign nations that the ports of Japan were to be closed against foreign intercourse. The foreigners now learned that the shogun was not the real emperor, but they were firm in the purpose to let slip no advantage already gained.

In Japan, as in China, Secretary Seward, who desired to substitute fair diplomacy for force, insisted upon the policy of cooperation of the powers, based on community of interests. He was opposed to intervention in internal affairs, but when the daimio of Nagato, opposing the shogun's treaties, closed the strait of Shimonoseki and fired on an American merchant steamer, the naval forces of the United States, Great Britain, France and the Netherlands, with the approval of the shogun's government, and in order to enforce treaty rights, opened the strait by force, and compelled the surrender of the hostile daimio." He favored a policy of neutrality with reference to internal struggles, but desired the establishment and maintenance of a strong central government by which treaties might be enforced, and native autonomy preserved.

The bombardment by the powers, together with the report of a Japanese embassy which returned from Europe in 1864, had a profound effect on the Japanese mind, and the emperor, with whom the powers began to direct nego-

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\* Out of a total indemnity fund of \$3,000,000 to the combined powers, the United States received \$785,000 which was afterwards returned (1883).

tiations from Hiogo below Kioto in 1865, yielded to ratification of treaties in spite of popular prejudice. The daimios who had at first opposed the shogun's policy, now acquiesced in the new policy of the mikado, who was soon restored to his ancient power, and encouraged the adoption of Western civilization.

In 1866, England, France, Holland and the United States agreed to a convention practically depriving Japan of the right to regulate its tariff beyond five per cent on imports and exports.<sup>20</sup> Though in 1872 Japan failed in her negotiations for a revision of treaties, the United States, since the growth of the imperial authority in Japan,<sup>21</sup> has been willing to release the latter from the treaty limitations upon its judicial and fiscal independence.<sup>22</sup>

**China.**—In 1784 the Stars and Stripes, floating from the *Empress of China*, an American trading vessel, first appeared in the Orient at Canton, the only Chinese port at which foreigners were permitted to trade. In 1786, President Washington, in the interests of a rapidly growing trade, appointed Samuel Shaw as consul at that port. It was over a half-century later that China first consented to make treaties regulating and extending commercial intercourse, and providing for the protection of the lives and property of American citizens on Chinese territory. From 1786 to 1844 the American consuls at Canton were merely merchants. During that time, however, our trade with China suffered only one temporary interruption—in 1821, when Terranora, a sailor on board of the American ship *Emily*, was judicially murdered by the Chinese magistrate, Pwanyu,

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<sup>20</sup> Treaties and Conventions, 1889, p. 612.

<sup>21</sup> See an article by Matsuyama Makato in vol. cxxvii of *N. Am. Review*, pp. 406-26. On the civil discord which resulted in Japanese reforms, see Sen. Exec. Doc. 65, 40-2, vol. ii, May 23, 1868.

<sup>22</sup> See the Commercial Convention of 1878, and the Treaty of Commerce and Navigation of November 22, 1894, which went into effect July 17, 1899.

and the American merchants at Whampoa protested without effect.\*

For many years the powers of Western Europe had been able to secure a restricted trade.\*\* As early as 1537 the Portuguese temporarily established a trade at Macao. They were soon followed by the Spanish, who had established a colony at Manila in 1543. In 1622 the Dutch attacked the Portuguese settlements at Macao and occupied the Pescadore (Pang-hu) Islands, and in 1625 they were induced to move to Formosa by Chinese promises of freedom of trade, but were driven to Java, a generation later, by the fleet of Koshinga, the pirate. In 1637 Captain Weddel, with an English squadron, anchored off Macao and compelled the opening of trade with the English. Soon after 1689 Russian caravans were permitted to go to Peking to trade. All attempts to secure commercial treaties or regular diplomatic intercourse, however, had ended in failure. Most ambassadors refused to make the nine prostrations required by the emperor as a preliminary to negotiation. In 1699 the English East India Company obtained permission to establish a factory and a consulate at Canton, where they desired to trade in tea, but trade was often interrupted by heavy duties and extortions. The Dutch finally secured the same privilege. No other port was open to commerce.

For half a century after 1720 all business of Europeans was transacted through a single company of Chinese hong merchants, which was responsible to the Chinese Government for the customs and duties, and responsible to no one for its enormous profits. Though the co-hong was dissolved in 1771, the hong merchants, by making presents to

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\* 14 De Bow, Apr., 1853, p. 359. Terranora accidentally killed a Chinese woman by dropping a pot on her head. He was finally given up to the Chinese authorities, who strangled him outside of the walls. [G. F. Train: *An American Merchant in Europe, Asia and Australia*. N. Y. 1847.]

\*\* Early relations of the Western Powers with China are fully treated in R. Montgomery Martin's "*China, Political, Commercial and Social*." [Official Report, London, 1847, 2 vols.]

the Canton magistrates, still contrived to maintain their monopoly and continued their exorbitant and extortionate prices, and in some cases refused to pay their debts. Suspecting that their complaints were never allowed to reach Peking, the British, in 1792, sent to the imperial city an ambassador (Lord Macartney), who secured the dismissal of the Canton viceroy who had encouraged the frauds. In 1816, they again complained of the manner of the Canton trade and asked for new ports more convenient to the principal tea district, but Lord Amherst, who was sent at the head of an embassy, was not received by the Chinese sovereign.

After the expiration (1833) of the charter of the East India Company, which had traded as a supplicant to whom the Chinese granted favors, the Western world began its demand for the admission to China of individual merchants who desired to trade. In July, 1834, Lord Napier, with instructions from Lord Palmerston, arrived at Canton and demanded trade as a right. The Chinese refused to enter into any kind of negotiations to trade with "barbarians." After a period of irritation growing out of opium smuggling, they precipitated war by issuing a decree suspending all trade with England, who, in turn, resolved to bombard the exclusive Asiatics and oblige them to open the country to foreigners who desired to walk civilly through it. Unable to cope with British gunpowder, they soon began to receive fresh light from new lamps. In the peace negotiations of 1842, at the close of the so-called "Opium War," they agreed to pay the expenses of the war, cede Hong Kong to Great Britain and open five ports, including that of Fuchau, which the British had especially desired. The commercial privileges which England secured by the cannon's mouth were soon granted to other nations who sought them.

The United States was not slow to take advantage of the Chinese reformed methods of intercourse. In September, 1839, when the Chinese suspected that Americans were

cooperating with the British, P. W. Snow, the American consul at Canton, had declined to conform to the troublesome Chinese literary conventionalities which the authorities asked him to insert in his reply to the edicts of the imperial commissioner." In December, 1842, President Tyler sent to the Senate and the House a message," prepared by Webster," referring to the importance of the Sandwich Islands and the China trade," and urging an appropriation for sending an official representative to China. A bill for a mission was called up by the Senate at midnight on the last day of the session of 1842-43. It met with much opposition. Benton, on the ground that we already had trade and could never have closer relations than that with a people so distant and peculiar, said there was no necessity for a treaty. The appropriation was voted, however, and Edward Everett was selected (March 3) as the first envoy." When the latter declined, Caleb Cushing was appointed. His instructions," signed by Webster, were designed to dispel the Chinese delusion that other nations were dependents, and their representatives tribute bearers. He was directed to announce to the Chinese that the United States "pays tribute to none and expects tribute from none," but desires friendship and the protection of rights.

Arriving at Macao in the *Brandywine* in February, 1844, he soon opened correspondence with the authorities near Canton, who kept him in diplomatic contention until the middle of May. Failing to induce the Oriental mind to allow him to go to Peking, he was finally persuaded to abandon that part of his plan. Pen and ink prevailed over thoughts of cannon and ammunition. On the arrival of

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\* H. Exec. Doc. 119, 26-1, Feb. 21, 1840, 85 pp.

\* Richardson's Messages, p. 211.

\* Curtis's Webster, p. 176.

\* In 1841 the imports of the United States from China were valued at \$9,000,000, and her direct exports to China were \$715,000 for domestic goods and \$485,000 foreign goods.

\* 5 Stat. at Large, p. 624.

\* Sen. Exec. Doc. 138, 28-2, Feb. 21, 1845, 9 pp.

an imperial commissioner, Cushing decided that it was best "to dispose of all the commercial questions by treaty before venturing on Peking," where the Chinese ceremonial required ambassadors to undergo a series of prostrations and bumping of the head on the ground before the footstool of the Chinese "Son of Heaven."<sup>a</sup> On July 3, at Wang Hiya, near Macao, he concluded with Keying<sup>a</sup> a treaty of peace, amity and commerce, opening the five ports to American commerce, establishing port regulations, allowing American citizens the privileges of residence, cemeteries and hospitals, conceding the right of foreigners to be tried before their consuls; granting to the United States the privilege of direct correspondence with the Imperial Government (to be transmitted by designated port officers), and promising all the privileges and advantages which China might grant to other nations.<sup>a</sup>

The United States, by her peaceful but firm policy, with no desire for Chinese territory, secured greater prestige and concession than the British.

In 1845 Cushing returned to the United States via the west coast of Mexico and Vera Cruz. At that time, he, like many others, probably did not foresee the swiftly-coming events which a few years later contributed to the necessity of revising the treaty and enforcing its provisions more rigidly. There were then no railways to the Pacific. California was not yet an Anglo-Saxon community. Uninspired prophecy declared that the Pacific coast would never be a part of the territory under the control of the United States Government. In less than three years thereafter, we had expanded to the Pacific, a line of American steamers were nearly ready to run from Panama to California and Oregon, and we were preparing to shorten the distance to

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<sup>a</sup> Benton: *Thirty Years' View*, vol. ii. H. Doc. 69, 28-2, vol. ii, Jan. 22, 1845, 14 pp.

<sup>a</sup> Keying appeared to be a man of relatively liberal views. He was unfortunate in his subsequent career.

<sup>a</sup> H. Doc. 69, 28-2, vol. ii, Jan. 22, 1845, 14 pp.



the Far East, and increase intercourse, by a transcontinental railway, and a regular, swift line of steamers between California and China " via the Sandwich Islands.

After Commodore Biddle had exchanged the ratified Cushing treaty, Alexander H. Everett was sent as our representative at Canton; but he soon died and was succeeded by John W. Davis, who managed to obtain an interview with the Imperial Commissioner at Canton, in 1848, and organized our peculiar judicial system in China."

In his message of December, 1851, President Fillmore announced that the office of Commissioner to China remained unfilled—that several persons, to whom the place had been offered, had declined because of the inadequacy

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\* H. Rp. 596, 30-1, vol. iii, May 4, 1848. 37 pp.

American interests in the Pacific and the Far East had "attained great magnitudes." In January, 1846, there were 736 American ships (233,149 tons), and 19,560 officers and seamen engaged in the whale fisheries. Their annual product was about \$10,000,000, and they spent about \$3,000,000 in foreign ports, annually, for refreshments and repairs. Besides the whaling industry, we also had 200 vessels (75,000 tons) and 5000 seamen engaged in the Pacific carrying trade—exclusive of the commerce with China. These considerations, induced the House committee on naval affairs to urge the necessity of a naval depot on the California coast, as a part of the proposed plans for facilitating intercourse between the Mississippi river and China. The committee said: "Our commerce with China possesses the elements of indefinite expansion." Under the new Chinese policy, which had released trade from the vexatious monopolistic control of extortionate, capricious mandarins, Chinese imports from foreign countries had increased from \$10,205,370 in 1842 to \$17,843,249 in 1844, and her exports from \$13,339,750, in 1842 to \$25,513,370 in 1844, exclusive of the opium trade.

By 1852, the American trade with China amounted to \$18,000,000 annually; but since the beginning of our trade with China, our imports had exceeded our exports more than \$180,000,000, which had been paid in silver. John P. Kennedy, Secretary of the Navy, suggested that China might be induced to receive American tobacco as a substitute for poisonous opium. [Sen. Exec. Doc. 49, 32-2, Feb. 16, 1853.]

\* See Sen. Exec. Doc. 72, 31-1, Sept. 9, 1850. (Davis' report as to consular courts.)

Mr. Davis was not able to find an American lawyer in all China, Hong Kong, Macao, or the Philippine Islands.

of the salary of \$6,000 to meet the expense of living. A year later he appointed Humphrey Marshall, who accepted, and arrived in China at the beginning of 1853, with a letter to the emperor, and instructions to seek more satisfactory regulation of intercourse. [See Appendix.]

The vast changes in conditions since the United States had stood alone in the solitude of her first territorial limits, brought new duties and greater opportunities. Then the possession of Florida and Louisiana by European powers was a source of anxiety to the fathers of the republic. Now, we had annexed the neighbors whom we had formerly feared. Then the trans-Mississippi and the trans-Rocky territories were open to the conquest of foreigners. Now, the Pacific alone intervened between us and Asia, and Europe looked with amazement and admiration upon the giant strides of the youthful but vigorous republic. While we had been advancing by expansion, the wonders of science had brought us into closer proximity with all of the powers of the world. In our weak beginning, when we were embarrassed by the wars of Europe, Washington gave a warning against foreign entanglements, which became stereotyped into a political proverb, but now people began to ask: "Can the country continue to regard itself apart from Europe and the world?" "Would not the new conditions require the United States to be a part of any great political transaction which affects the history of the world?" We were interested especially in the relations and policies of the great colonizing nations of Europe. Feeling that relations with the East would constitute the most important factor in the achievements of the future, some went so far as to advocate an Anglo-American alliance "to preserve the

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\* W. H. Trescot, whose name figured later in the foreign relations of the United States, in 1849, stating that the Russian colonial system must be an exclusive one, and believing that the recent British economic policy indicated that Great Britain was "willing to share with the United States the divided allegiance of the world" considered that an alliance should be a part of our foreign

integrity of China and an open door, and to arrest the increasing power and growing antagonism of England and Russia in the direction of Asia, which was now our near neighbor. The United States, therefore, felt as much concern in the affairs of the East as any nation in Europe.

The year which Marshall spent in China was one of great political confusion. Revolution sought to remedy the chronic diseases of the empire. Part of the political organism undertook to throw off superincumbent weight which had been sustained for years.<sup>7</sup> Taiping<sup>8</sup> affairs culminated,

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policy. He considered it the only means to frustrate Russian designs, and, at the same time, preserve the independence of China. Spain was too feeble to interfere, and Austria and Prussia were only "accidents and convenient outworks of other nations." France, who (excepting England) was the only European power possessing a basis for independent action was still the natural ally of Russia, as she was at Tilsit. "Equally as natural," said Trescot, "and equally as necessary, is the alliance between England and the United States. . . . The future history of the world must be achieved in the East. . . . The United States and Great Britain by concerted action on the ocean can control the history of the world. . . . Indeed, how can it be otherwise. We are the two great commercial nations of modern history, . . . with the same language and ancestry. . . . And while the interest, both of England and the United States, lies in the monopoly of their Asiatic trade, each Government is peculiarly adapted for its respective part in the accomplishment of so important an end. . . . Thus allied in an honest unity of interest, the United States becomes England's strength, against the world, in support of her Indian colonies, and, shut out from territorial aggrandizement themselves, the United States, are thus by alliance with England—sharers of a common basis for further operations."

<sup>7</sup> See an article in *15 De Bow*, Dec. 1853, pp. 541-71: *China and the Indies—Our "Manifest Destiny" in the East.*

<sup>8</sup> The religious movement which developed into the Taiping rebellion was organized in the interior of China by Hung Sew-tsuen, a schoolmaster, who had been influenced by Christian books and had renounced Buddhism. His followers resisted exactions, were persecuted, and finally arming themselves for self-defence, destroyed temples, and in October, 1850, won an important victory over the imperial soldiery. Moving northward, they conquered as they went. In March, 1853, they captured Nanking, which became Hung's capital in 1860. In 1853, they also took Shanghai. Their success thrilled the world, but political corruption and fanaticism

and the fate of the imperial dynasty was hanging in the balance. The imperial officials were too busy to attend to foreign affairs. Marshall could obtain no conference with a properly authorized plenipotentiary. On his arrival in January, he sent a note to Yeh, announcing his appointment and requesting an interview. He was far from pleased at Yeh's note of excuses.\* In his despatch to the Department of State<sup>†</sup> he gave vent to his indignation at being embarrassed in his usefulness, and announced his determination not to submit to such discourtesy. He then went to see Eliang (Governor of Kiang-nan and Kiang-si provinces), who received him in person on July 4, and sent to the Emperor the President's letter, and Marshall's request to be received at Peking to conduct American diplomatic relations there. He (Marshall) received acknowledgment of the letters, but his request was not granted. His hopes were chilled by new evasions and new reference to everything and everybody of Canton, the theatre of perplexity, and the usual channel for conducting diplomatic business. At Canton, however, all of his applications were refused.<sup>‡</sup>

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clouded their ideas of reform. They failed in their attack upon Peking, were expelled, by European powers, from Shanghai and Ningpo, and finally, in July, 1864, were driven from Nanking with merciless slaughter. The overthrow of the rebellion was aided by the leadership of Gen. Ward, an American, and Col. Gordon an Englishman.

\* Yeh and the Governor returned the following gem of literary piquancy and Chinese diplomacy: "... We are delighted to understand that the honorable Commissioner has received the superintendence of trade at the five ports. We have heretofore heard that the honorable Commissioner is mild and even-tempered, just and upright. ... As to setting a time for an interview, we, the Minister, and Governor are also exceedingly desirous of a mutual interview, when face to face we may converse, in order to manifest the good correspondence of our respective countries; but I, the Minister, am at present at Saou-Chow Pass, and I, the Governor, having the superintendence of everything, have not the slightest leisure, and can only await the return of the Minister. ... ." [H. Exec. Doc. 123, 33-1, p. 13.]

† Despatch No. 3, Feb. 7, 1853. H. Exec. Doc. 123, 33-1, p. 13.

‡ Despatches 21, 27, and 28, July 6, Aug. 26, and Aug. 30, 1853. H. Exec. Doc. 123, 33-1, pp. 189, 240, and 248.

He also had much difficulty and conflict with the American naval commanders, whom he asked to conduct him to northern ports, but to whom he refused to divulge his purposes in going. He complained that his exposure to the discourtesy of Commodore Aulick would leave an unfortunate impression on the minds of Chinese officials and result in the procrastination of impending questions and the loss of important advantages in political arrangements. With Perry, who relieved Aulick in the East, and stopped at Shanghai en route for Japan, he was no better pleased. Impatient in his desire to present his credentials, and to insist upon an official residence at Peking, and urging that it was a favorable time to press China for more satisfactory relations, he asked Perry "to leave a naval force at Shanghai to make his demands and negotiations more effective." His proposition was disregarded. With no vessels at his command, and no prospects of diplomatic intercourse by the close of the year, he was not sorry to close his mission and return to the United States. The unreserved publication of his despatches (even of his most confidential letters) in July, 1854, gave the world an opportunity to see the extent and character of his vexations. His intention to leave China he

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"Sen. Exec. Doc. 34, 33-2, pp. 23-26.

"In a note to Perry on May 13, Marshall said: "If the Emperor of China confronted by a formidable rebellion . . . would prefer to hazard war with the United States to an admission of their envoy to this court, yet will not execute his treaty obligations by appointing a proper public officer to adjust questions which arise in the foreign relations of his government, the United States might well desire to modify their policy with Japan until their future relations with China were more clearly ascertained."

In the latter part of the year, Perry who had returned to Hong Kong from Japan, was requested by Marshall to cooperate with him in an attempt to visit Peking to learn the exact condition of the revolution, to insist upon commercial rights, and to assure the "Christian Emperor" of his readiness to acknowledge the new government; but the Commodore, stating that neither of the Chinese parties was in a condition to negotiate, refused to take any step that might be interpreted as participation in the civil war.

announced to Yeh, who replied [January, 1854]: "I avail myself of the occasion to present my compliments, and trust that, of late, your blessings have been increasingly tranquil."

In October, 1853, Robert McLane was appointed Commissioner to China.<sup>4</sup> His instructions<sup>5</sup> of November 9, from Marcy, vested him with large and discretionary powers, by which he could be prepared to meet contingencies which might arise from the results of the existing revolution. He was directed, in case of a crisis, to attempt to secure unrestricted commercial intercourse—free trade, if possible—but with no desire for exclusive privileges.<sup>6</sup> He was assured that Perry would receive instructions to cooperate and give such assistance as the exigencies of the public interest might require, and at least to comply with any request for a steamer. In view of the possible success of the revolutionists, he was authorized to use his discretion in recognizing the government *de facto* and treat with it—or, in case China should be divided under several governments "promising stability," to negotiate treaties with each government.

Taking the overland route to the Pacific, McLane reached Hong Kong on March 13, 1854. Like his predecessor, he was unsuccessful in his attempts to open diplomatic intercourse. He found Yeh still too busy to talk.<sup>7</sup> Looking at

<sup>4</sup> Robert J. Walker had accepted the Chinese mission, but finally declined.

<sup>5</sup> Sen. Exec. Doc. 39, 36-1, vol. xi, Apr. 23, 1860. 4 pp.

<sup>6</sup> He was also given power to make a similar treaty with Corea, Cochin China, or any other independent Asiatic power with whom we had no treaty—and, in case Perry might fail, to renew efforts in Japan.

<sup>7</sup> On Apr. 6, Yeh in reply to McLane, wrote: "Yeh . . . am delighted to learn that the Commissioner has arrived in the south of China. . . . I, the Minister, am exceedingly comforted in my mind. As to appointing a time for presentation, I, the Minister, am also desirous of an interview . . . ; but just at this moment, I the Minister, am superintending the affairs of the army in the several provinces, and day and night have no rest. Suffer me, then, to wait for a little leisure, when I may make selection of a propitious day, that we may have a pleasant meeting." [Sen. Exec. 22, 35-2, p. 19.]

the archives of the legation, he reported that they presented a very humiliating view of our past relations with China, whose officials rendered intercourse most unsatisfactory. Considering the experience of both England and France, he was convinced that diplomatic intercourse could be obtained with the Chinese Government only at the cannon's mouth, but he resisted Sir John Bowring's suggestion for uniting forces for combined action.<sup>8</sup> Mr. Parker, secretary of the legation, suggested that the Chinese officials should be warned that such discourteous treatment would be borne no longer, and that a remonstrance should be presented to the emperor in person—either to Hêen Fung or to Taiping.<sup>9</sup>

Informing Yeh that he would seek some other medium of communication, McLane soon went northward to Shanghai,<sup>10</sup> which had been held by the revolutionists since the autumn of 1853, but was still annoyed by the imperial forces. He found that American merchants were not yet satisfied with the decision of Marshall, that suspension of custom house control by the Imperial Government did not annul the treaty obligation to pay duties.<sup>11</sup> He sustained

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<sup>8</sup> Despatch No. 3, to Marcy, Apr. 20, 1854. Sen. Exec. Doc. 22, 35-2, p. 21.

<sup>9</sup> In 1854, encouraged by the success of his Japan expedition, Perry advocated the extension of the American policy (of stopping exclusiveness) to Cambodia, Borneo, and especially to Formosa, which he considered might be useful in aiding China to establish a more liberal form of government. For the latter purpose he intimated that further intervention by Great Britain after the Opium War would have been justifiable. Opposed to any toleration of unsocial and insolent exclusiveness, he urged that diplomatic representatives should reside at Peking and other oriental capitals. Looking to the future, he said: "We must protect commerce, and prepare for events which must transpire, in the East. In the developments of the future, the destinies of our nation must assume conspicuous attitudes." [Perry: U. S. Japan Expedition, vol ii, pp. 173-81.]

<sup>10</sup> Senate Exec. Doc. 22, 35-2 (vol. viii), p. 29 et seq. Despatch Nos. 4, 5 and 6, May 4, and 21, and June 14, 1854.

<sup>11</sup> Marshall, considering that it was the duty of the United States to protect the Chinese revenue, and that if duties were not paid

the decision of Marshall, however, and awarded to the Chinese the revenues due from Americans."

In June, 1854, McLane visited Woohoo, about 70 miles above Nanking, and investigated the origin, purpose, and extent of the Taiping rebellion. The insurgent leaders appeared not to have the liberality and friendliness which had been attributed to them by the deluded missionary sympathizers. In exclusiveness and extraordinary pretensions the chiefs exceeded the tone of the imperial authorities." They informed Captain Buchanan that he might be permitted to make yearly visits to bring tribute and bathe in the "gracious streams of the celestial dynasty."

In October, McLane, in company with Sir John Bowring, sailed northward, and after some "amphibious adventures" at the mouth of the Pei-ho, met an imperial [non-plenipotentiary] commissioner in a wretched tent near Taku, and participated in a fruitless conference which lasted almost an entire day." On August 20, he had arrived at the conclusion that if the efforts then being made should

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at Shanghai, they would be levied on the goods in the interior, had established a provisional arrangement for the payment or guarantee of the duties. The British residents did not favor the system, and offered no opposition to a "rebel" mob which sacked the custom house on September 7, 1853.

"Sen. Exec. Doc. 22, 35-2, p. 112 et seq. [Despatch 7, July 7, 1854.] On Nov. 8, before the award was paid over, Marcy agreeing with Lord Clarendon, gave instructions to rescind the arrangement as to duty obligations. Parker, the *chargé d'affaires* was much embarrassed by this order, and the insubordination of Mr. Murphy, the American consul. The question of paying the duties was finally settled by Attorney-General Cushing, who decided that the award of McLane, as an arbitrator, was obligatory. The Chinese difficulty in managing the revenues soon resulted in the establishment of a Foreign Inspectorate of Customs, to supervise the duties, and see that they were collected.

"See the "Mandatory" enclosed in Despatch No. 6 of June 14, 1854. Sen. Exec. Doc. 22, 35-2, p. 62. Also see p. 50 et seq., and p. 70 et seq.

"For Chinese memoranda of the conference, see enclosures in Reed to Cass, No. 33, Oct. 21, 1858, Sen. Exec. Doc. 30, 36-1, pp. 438-88 (vol. x).



prove unavailing, it would be necessary to abandon all further expectation of extending commercial intercourse by treaty, unless Great Britain and the United States should concur in a policy of exerting a more active and decided influence on the destiny of China." In November he urged Marcy to adopt a "more positive policy," stating that if the Chinese emperor remained obstinate a united Anglo-Franco-American fleet should blockade the Pei-ho, Yanste, Min, and Canton rivers, until all the commercial privileges demanded by the foreigners should be conceded."

Secretary Marcy remained cool, conservative, and careful.

McLane having returned to the United States (in December, 1854) in poor health, in the summer of 1855 Mr. Parker was appointed commissioner. His term of service was coincident with a period of troubles which severely tested his amiable, religious temper. He went to China via London, where he exchanged generalities with Lord Clarendon on Anglo-Saxon interests, Anglo-American alliance, and "concurrent action and cooperation in China."

Like his predecessors, he failed to bring Yeh to a personal interview. Unable to appreciate the latter's method of conducting the Chinese foreign office, he sailed northward. On September 3, while at Shanghai, he wrote Marcy: "The contemplated plan of concurrent action on the part of Great Britain, France and the United States never appeared to me more wise or desirable than at this moment." Having no American squadron available to accompany him to the Pei-ho, he returned (November, 1856) to the south of China where he found American commercial interests paralyzed by the confusion resulting from the *Arrow* affair and the British bombardment of Canton."

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<sup>1</sup> Despatch No. 10, Sen. Exec. Doc. 22, 35-2, p. 169.

<sup>2</sup> Despatch 20, Nov. 19, 1854, Sen. Exec. Doc. 22, 35-2, p. 285.

<sup>3</sup> Sen. Exec. Doc. 22, 35-2, p. 921.

<sup>4</sup> Another effort to secure changes in treaties, which was about to be made in conjunction with the Ministers of France and England, was suspended by the Canton hostilities.

The United States was almost drawn into the conflict at Canton. A few Americans joined the British hostile forces and displayed the American flag. After the beginning of the conflict, the Chinese, having suggested the withdrawal of the American forces, became provoked because an American boat was sent "to sound the river in the vicinity of the forts" and they opened fire on a boat carrying the American flag, and belonging to one of the American ships-of-war. Commodore Armstrong, in reply, authorized a movement against the Barrier forts, then demanded an apology for the insult to the flag, and finally emphasized the demand by destroying the forts." The British believed that the United States had become involved and would henceforth actively cooperate."

Parker claimed to be cautious, but on December 12<sup>th</sup> he confidentially suggested to Marcy that the combined forces should present themselves at the Pei-ho, and in case China still refused to welcome envoys at Peking, as a final step resort to reprisal by hoisting the French flag in Corea, the British in Chusan, and the American in Formosa, and the retention of the territories until China should accept the terms offered, and give satisfaction for the past and a right

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\* Commanders Foote and Armstrong, notified by Consul O. H. Perry that there was danger of trouble, had moved up the river toward Canton for the purpose of protecting American citizens. The Chinese, excited by the collision with the British, fired upon the American vessels without cause. The action of the Americans in destroying the Barrier forts, was not regarded by the Chinese as an act of war, and was considered within the limits of a neutral policy. [H. M. Wood: Fankwei, N. Y., 1859.]

\* Nearly a year later, Mr. Reed wrote Secretary Cass that the archives of the legation showed that Parker "to a certain point, encouraged Sir John Bowring [and others] in the most extravagant expectations of cooperation on our part, to the extent even of acquisition of territory." Referring to the mischievous effects of Parker's course he said that when the delusion was broken, and it became understood that the extreme policy of cooperation was disavowed, or discouraged, all suggestions of friendly concert on points of common interest, which the well-known policy of the government had authorized, were suddenly repelled. [Despatch 3, Reed to Cass, Nov. 10, 1857, Sen. Exec. Doc. 30, 36-1, vol. x, p. 17.]

\* Despatch 34, Sen. Exec. Doc. 22, 35-2.

understanding for the future."<sup>1</sup> He said that the occupation of territory, as a last resort, for injuries inflicted, would be far more humane and effective than the destruction of life and property by bombarding forts and cities. On February 12, 1857, he again suggested the policy of taking Formosa."<sup>2</sup> He had just received a letter from Gideon Nye, Jr., who, considering the character of the mongrel race on the island, urged that Commodore Armstrong should take possession of the territory and hold it in the interests of humanity and commerce."<sup>3</sup>

Notwithstanding the attempt to involve the United States in hostilities, the American Government remained strictly neutral. Secretary Marcy regretted that there had not been more caution by the Americans at Canton, and refused to entangle the United States in a protracted struggle. "The British Government," said he, "evidently has objects beyond those contemplated by the United States, and we ought not to be drawn along with it, however anxious it may be for our cooperation."<sup>4</sup> Considering that there was no obligation resting on China to negotiate at Peking, or near there, for the revision of the treaty of 1844, which she had agreed to revise, but without designating a place, the Pierce administration did not believe that relations with China warranted the "last resort" suggested by Parker. It decided to increase the naval force in Chinese waters, "but not for aggressive purposes."<sup>5</sup>

<sup>1</sup> Sen. Exec. Doc. 22 (part 2, p. 1083), 35-2.

In 1856 some urged that the United States, keeping up with England and France, should widen the area of her national institutions, maintain an imposing naval force in Chinese seas, and follow American commerce everywhere with a show of power. [H. M. Wood: *Fankwei, or the San Jacinto in the Seas of India, China and Japan*, N. Y., 1859.] <sup>2</sup> Sen. Exec. Doc. 22, part 2, p. 1183.

<sup>3</sup> *Ibid.*, Exhibit G, p. 1204.

<sup>4</sup> Instr. China, Marcy to Parker, No. 9, Feb. 2, 1857. In Sen. Exec. Doc. 30, 36-1, vol. x, p. 4.

<sup>5</sup> Instr. China, Marcy to Parker, No. 10, Feb. 27, 1857 [*Ibid.*, p. 6]. In the following April Secretary Cass said: "We have of course no political views connected with that empire." [To Lord Napier, Apr. 10, 1857. In Sen. Exec. Doc. 47, 35-1.]

Secretary Cass, under the Buchanan administration, adhered to the same policy of neutrality. In March he received through Lord Napier a paper (dated January 9) from Lord Clarendon inviting the United States to join the alliance and participate in hostile movements against China in order to obtain the following objects:

1. Recognition of the right to send a minister to Peking.
2. Commercial extension beyond the five ports.
3. Reduction of tariff duties levied on domestic produce in transit from the interior.
4. Religious freedom of all foreigners in China.
5. An arrangement for the suppression of piracy."
6. Provision for the extension of whatever benefits might be obtained to all other civilized powers of the earth."

Though the President recognized all these objects as just and expedient, and was sensible of the liberal policy of the allied powers in disclaiming any intention to secure exclusive commercial advantages for themselves, he could not agree to cooperate in hostile demonstrations. Though he had power to employ naval forces for defence and for protection of American citizens, he stated that a military expedition into Chinese territory could not be undertaken except by Congress. Besides, although he was determined to ask China for a revision of the treaty of 1844 (which contained a clause providing for revision at the expiration of 12 years) he could not agree that our relations would warrant a resort to war. Secretary Cass, in his reply to Napier, said: "True wisdom dictates moderation and discretion in attempts to open China to the trade of the world."

In May, Mr. William B. Reed was appointed "Envoy Ex-

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" In 1855 a detachment from an American man-of-war destroyed the junks and burnt the depots of some pirates in Chinese waters. [Rp. Secy. of Navy, Dec. 1855.]

" MS. "Notes" from Brit. Legation to the Department, March 14, 1857.

" Notes from the Department to the Brit. Leg., Apr. 10, 1857.

" In July 1857, Parker, having no instructions, declined the invitation of the Earl of Elgin to unite with him in a visit to the

traordinary and Minister Plenipotentiary to China [to watch for an opportunity to revise treaties], with instructions "based upon a policy of peaceful cooperation in efforts to secure the objects sought by the allies." "But on your side," said Cass, "efforts must be confined to firm representations, appealing to the justice and policy of the Chinese authorities, and [in case of failure] leaving to your own Government to determine upon the course to be adopted. . . . The United States is not at war with China, and only desires lawful commerce" and the protection of its citizens." The instructions explicitly stated that the United States had no motives of territorial aggrandizement or acquisition of political power in China." Recognizing the potent influence of commerce alone as a means of introducing progressive civilization and national improvement, Cass said: "With the domestic institutions of China we have no political concern." Having no reason to believe that either of the contestants in the Chinese civil war would be more ready than the other to extend commercial intercourse, he directed Reed to use discretion in all that related to the internal conflict. To provide for possible contin-

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north of China. In August, learning that Mr. Reed had been appointed to succeed him, he returned to the United States.

<sup>11</sup> Instr. China, Cass to Reed, No. 2, May 30, 1857. In Senate Exec. Doc. 47, 35-1, vol. xii, Apr. 20, 1858. (9 pp.)

<sup>12</sup> Reed was instructed that, in case Russia secured the reception of an accredited minister, there was no reason why he should not have the same friendly relations with the latter as with the British and French representatives.

<sup>13</sup> American citizens had not enjoyed "all the proper accommodations in obtaining homes and places of business," as provided by treaty. Local authority had interfered to prevent Chinese inhabitants from granting such rights, and had neglected to examine American complaints as to Chinese frauds or debts. They had not sufficiently enforced the guarantee of security for persons and property. The Chinese regulations reducing the true standard of the American coin had also injured trade.

<sup>14</sup> It was suggested that Mr. Reed, while watching for a favorable time to secure revision of treaties, might even have an opportunity to serve as a medium of communication between belligerents, and prevent war.

gencies the Chinese squadron was increased and the movement of forces placed as far as possible under Mr. Reed's control.

Mr. Reed, on reaching China, found the trade of all nations suspended by the blockade of the Canton river, and the imperial authorities still busy with the Taiping insurrection. He soon discovered that it was not a favorable time to negotiate for the revision of treaties." On November 17 he wrote to the tranquil Yeh, announcing his arrival and requesting an interview. Before receiving a reply, he wrote again, on November 28, stating that the United States, although not a party to the existing hostilities, was determined to secure redress for wrongs which American citizens had suffered at the hands of Chinese authorities—and that friendly feeling could not possibly continue if China should withhold the courtesies of intercourse." On November 24, Yeh replied that, although he had much desire for an interview, there was no place where to hold it, since the British had burned the houses near Canton. As to the treaty, he said it had "proved satisfactory" and needed no alterations. In December, he again wrote that the American merchants and citizens having been treated with courtesy and kindness in China, could have no wrongs to redress." He expressed confidence that Reed, being clear-headed, would not act as Parker, whom he suggested had been recalled for his conduct. On December 12, Reed, regretting that no opportunity was given for an interview, the result of which might be beneficial to both nations, replied: "The time is not far distant when your excellency may be sorry you have not seen me. . . . The treaty of 1844 must be revised. . . . The time has come when the United States, the greatest nation of the Western world,

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" Message of President Buchanan Dec. 8, 1857.

" In Despatch No. 36, Reed to Cass, Dec. 15, 1857. Sen. Exec. Doc. 30, 36-1, vol. x, pp. 49-53.

" Yeh to Reed, Dec. 8, 1857. Enclosure in Reed's No. 39 to Cass, Dec. 28.

must be treated on terms of equality with China, the oldest civilized nation of the East, and I have come in a conciliatory spirit to claim that right." In response, Yeh wrote (December 18): "From this it is plainly to be perceived that your excellency well understands the position of things, and the heartfelt regrets which you express have greatly tranquillized my feelings. . . . The despatches of . . . . Parker sometimes had remarks . . . not agreeable and courteous, but I never attached much importance to them in my mind. . . . Our two countries are like two good friends . . . in every respect on the best of terms."<sup>18</sup> Here the correspondence ended with the arrow of controversy still in the quiver. Such skillfully turned phrases and such masterly inactivity were difficult to meet by any form of literary retaliation known to the Western mind.

The crisis at Canton was rapidly approaching. By the close of the year all of the forts were taken. Early in January, 1858, Reed wrote that the city was completely in the hands of the allies.<sup>19</sup> Yeh had been captured and imprisoned on a war-vessel. At his house were found many documents relating to foreign affairs (including the original Cushing treaty), which indicated that the Foreign Office of China had practically been at Canton for many years.<sup>20</sup> On February 13, Yeh was sent to Calcutta for safe keeping. Having disposed of the tranquil commissioner, the powers prepared to urge their demands upon the Peking Government. Reed had come to the conclusion that vigorous action was necessary to secure redress. While suggesting

<sup>18</sup> Enclosure in Despatch 39, Reed to Cass, Dec. 28, 1857.

<sup>19</sup> "The Western powers," said Reed, "must give up the dream of dealing with China as a nation to which the ordinary rules apply." [Despatches, No. 3, Jan. 4, 1858. Sen. Exec. Doc. 30, 36-1, vol. x, p. 86.]

<sup>20</sup> Despatches, No. 5, Reed to Cass (Macao, Jan. 26, 1858). After learning more of these documents, which reflected the foreign policy of the Imperial Government, Reed wrote: "Decisive action is necessary with the officials who rule this people." [Despatches, No. 8, Feb. 4, 1858.]

that the Chinese indebtedness of \$800,000 to the United States might be realized by treaty, or by detention from duties, he was confident that the only sure method of obtaining redress was peremptory demand enforced by the blockade of ports as a means of reprisal.<sup>104</sup> By invitation, he cooperated with the allied powers and Russia in addressing communications to Peking. In his appeal to China he stated that the United States, having most friendly relations with Russia, France and Great Britain, and desiring the integrity of China to remain inviolate by the terms of redress and peace, was ready to extend friendly offices.<sup>105</sup> In this appeal he was proud to unite, because he considered it "entirely consistent with the peaceful attitude we have tried to occupy in the East."<sup>106</sup> He also considered that under his instructions he could proceed with the allied fleets to the north, and try the effect of the appearance of force near the seat of the Imperial Government. Desiring to provide for a contingency in which China should refuse to negotiate or resort to evasions, he asked to be invested with power to resort to measures of coercion for securing redress.<sup>107</sup>

The Department of State approved Reed's course in joining the powers in writing the notes to the Chinese emperor, but stated that the United States could not join in a continuation of coercive measures by resort to arms—at least, not yet.<sup>108</sup>

The notes to Peking having failed to produce the desired result, the powers decided to use more effective measures by an advance toward the imperial capital. Reed suggested that the United States should accompany the allied fleet with all of her available force, to show the Oriental

<sup>104</sup> Despatches, No. 7, Feb. 1, 1858. Sen. Exec. Doc. 30, 36-1, p. 104.

<sup>105</sup> For Reed's letter to the Chinese Government, see Sen. Exec. Doc. 30, 36-1, vol. x, pp. 171-75.

<sup>106</sup> Despatches, No. 9, Reed to Cass, Feb. 13, 1858. Ibid., p. 125.

<sup>107</sup> The President had already asked Congress for such power.

<sup>108</sup> Instructions, China, No. 11, Cass to Reed, Apr. 28, 1858.



mind that she was not compelled to abstain from hostilities through any want of means." In May, while preliminary operations were pending, he held conferences with Chinese commissioners, pursuing a course concerning which Lord Elgin guardedly expressed his dissent and disapproval." He sailed with the allied fleet in their advance toward Peking, and was an observer of the hostilities which he had tried to prevent." After the fleet had captured the Taku forts, enabling it to steam up the Pei-ho toward Peking and compel China to yield concessions, he secured all the advantages which had been forced by ball and bayonet. After several interviews with the Chinese commissioners at Tientsin, on June 18, he wrote: "I have to-day signed a treaty." In the negotiations, the two great points of difficulty were in regard to the permanent residence of a minister at Peking, and the navigation of the rivers.

The treaty, which Mr. Reed negotiated, renewed the extra-territoriality clause for consular judicial jurisdiction in suits against United States citizens in China, granted the right of direct correspondence with the privy council, permitted the minister of the United States to visit and sojourn at Peking for the transaction of business once each year, secured more liberal commercial regulations and gave access to new ports and to the interior of the country." On No-

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" Despatch No. 11, Reed to Cass, Shanghai, Apr. 3, 1858. A few days later, Reed seeing little chance of being able to accomplish anything, expressed a wish to return. On June 25 Cass replying that the President assented to his urgent wish, urged him to stay until there was no reasonable hope of prompt accommodation. [Instr. China, No. 12, Cass to Reed.]

" Despatch No. 17, Reed to Cass, May 15, 1858. Sen. Exec. Doc. 30, 36-1, vol. x, p. 297.

" The Russian and American squadrons were given orders to abstain from hostilities—except in cases of extremity.

" On the treaty and its effects, see Reed's despatch to Cass, No. 23, June 30, 1858. Sen. Exec. Doc. 30, 36-1, pp. 351-63, and 363-70; also despatch No. 29, July 29, 1858. Ibid., 371 et seq.

For further remarks on the treaty, and philosophic generalizations regarding the nature of the Chinese government and its foreign relations, the real authority in the political system, the Chi-

vember 8, he negotiated a convention<sup>20</sup> for settling the claims of American citizens, by which China afterwards paid the United States \$735,238.97.<sup>21</sup>

The English and French treaties of 1858 each contained a clause providing for an exchange at Peking, and the envoys, Sir Frederick Bruce and M. de Bourbillon, refused to listen to Chinese officials who were sent to Shanghai to dissuade them from going to Peking.<sup>22</sup> Arriving at the mouth of the Pei-ho in June, 1859, they found the river obstructed by improved forts at Taku and, by chains which the Chinese refused to remove. The allied fleet of nineteen vessels was under the command of the English admiral, Hope. Upon learning of the obstructions in the river, Admiral Hope made an imperative demand that they be removed at once. This the Chinese refused, and Bruce, hoping that the matter was susceptible of an amicable adjustment, attempted to enter into negotiations for the removal of the booms so that he might be permitted to pursue his journey to Peking.

Almost coincident with the arrival of the British and French, two American vessels, under Commander Josiah Tatnall, escorting the American Minister, John E. Ward, reached the waters of the Pei-ho. Ward had received the assent of the Chinese commissioners at Shanghai to go to the imperial capital, and had resolved to proceed until stopped by a force which could not be overcome by that under Tatnall by which he was escorted. Persuaded by

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nese negotiations, and the influence of the conduct of foreigners, see Reed's despatch No. 31 to Cass, Sept. 4, 1858. *Ibid.*, p. 429 et seq.

For illustrations of Chinese polity, and characteristics, see D. Wells Williams's despatch No. 2 to Cass, Jan. 28, 1859. *Ibid.*, p. 545.

<sup>20</sup> Despatches, Nos. 35 and 37, Reed to Cass, Nov. 9, and Nov. 10, 1858. *Ibid.*, pp. 493-528.

<sup>21</sup> After the settlement of the claims by a United States commission, a surplus remained. In 1885 a balance of \$453,400.90 was returned to the Chinese minister at Washington.

<sup>22</sup> See 14 Ward to Cass June 13, 1859. Sen. Exec. Doc. 30, 36-1, pp. 569-85.

Tatnall, on June 25 he boarded an American chartered steamer, which passed the vessels of the allies, but grounded on a mud flat when within half a mile of the forts. On the next day, after the American vessel had been floated out of the line of fire, the allies began the attack on the yellow-flag-crowned Taku forts and attempted to clear the river, but the Chinese, with more artillery than had been suspected, opened a heavy fire which did serious damage. Throughout the fight the American force was nominally neutral. But Tatnall, when a young British officer informed him that Admiral Hope was seriously wounded, and intimated that American assistance would relieve the situation, turning to Ward, said: "I must either help Hope or return to the *Powhatan*. I can't stand here and see them shot to pieces. . . . Blood is thicker than water." He proceeded to extend his sympathy, and despite the protests of fellow-officers, assisted in landing men from the allied fleet to storm the forts. When the landing party was cut to pieces he sent boats to aid them to return to their vessels."

After the fight made it evident he could not reach Peking with the French and English, Ward, in accordance with treaty provisions, opened negotiations for means of conveyance overland." In a yellow cart, he started toward the imperial city, and on August 16, without force, secured the ratification of the treaty."

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" Sen. Exec. Doc. 30, pp. 585-91. 15 Ward to Cass, July 4, 1859.

" Ibid., pp. 591-94. 16 Ward to Cass, July 10, 1859.

" Ibid., p. 594 et seq. 17 Ward to Cass, Aug. 20, 1859. Ward landed at Pei-t'ang, north of the mouth of the Pei-ho, and was taken to Peking by carts and by boats, over which floated a yellow pennant with the words: "Tribute bearer from the United States." The imperial commissioners informed him that it was necessary to have an audience with the emperor before the treaty could be exchanged, but agreed to require of him only one-third of the usual number of kneelings (three) and touchings of the head on the ground (nine) required of envoys. Ward replied that he knelt only to God, and refused to bow except as he would to the President of the United States. The commissioners then arranged a plan for avoiding the formalities, but the emperor insisted that he

The Chinese continued to oppose the treaties after they had been ratified, and endeavored to prevent their execution.\* In 1860 British and French forces, having destroyed the defences of the Pei-ho river, took possession of the imperial city and induced the opening of the new ports of Nin-Chwang, Tung-Chan, Tai-wan (in Formosa), Chan-Chau, Kiang-Chau and (later) Tientsin. Russia, taking occasion to settle long-standing questions, obtained from China the region north of the Amoor and a tract along the coast of Manchuria below 43°.

Burlingame, whom Seward sent as United States minister to China in June, 1861, with instructions to lend no aid or countenance to the Taiping rebellion, but to consult with English and French ministers, desired the treaty powers to agree on the neutrality of China, to secure order in the treaty ports,\*\* give their moral support to the Chinese party which was in favor of order, to encourage the adoption of progressive reforms and make an effort to substitute diplomatic action for force. His ideas met with the approval of the representatives of Great Britain, France and Russia. Some foreigners, however, advocated alienation of Chinese

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must touch either the knee or the fingers to the ground, and no audience was arranged. The ratified treaties were unceremoniously exchanged at Pei-t'ang where Ward embarked for Shanghai.

A. A. Hayes, in an article in the *Atlantic Monthly* for May, 1887, says that it has been our policy to "crawl behind the British guns, and come forward at the end of war with our bills for lost dressing-gowns, pipes, slippers and peace of mind."

\* While an Anglo-French war against China was impending in Feb., 1860, President Buchanan agreed that the United States should pursue the same policy as that outlined by Russia.

\*\* In several cases American naval forces had aided in preserving order. In August, 1859, during a disturbance which arose among the Chinese population at Shanghai on account of alleged kidnapping of "coolies" for a French merchant vessel, Captain Nicholson, at the request of the United States consul, landed part of his crew of the *Mississippi*, but order was restored and no collision occurred. [Rp. Secy. of Navy, Dec., 1859.] In June, 1860, during a fight between the Canton Chincheu men, Commander Berrien, at request of Consul Gouverneur, sent an armed boat to protect American residents.

territory at the principal treaty ports and exclusive jurisdiction by England; and others, though well-meaning, excited the opposition of the Chinese by pressing the question of constructing railways and telegraphs.

In 1868, Burlingame, as minister plenipotentiary of China, negotiated a treaty with the United States favoring the territorial integrity of the empire, exempting persons from persecution for religious faith, acknowledging the right of voluntary emigration,<sup>7</sup> and confirming the previous consular jurisdiction. Though Secretary Fish thought the United States should have additional concessions, and that there should be a moderation of the restrictions which fettered commerce, he had no desire to embarrass the Chinese Government.<sup>8</sup>

In her subsequent relations with China the United States has continued to be non-aggressive, modest and friendly. She has continued to adhere to a policy of cooperation with the other powers upon the principle of native independence, an open door, and equality of opportunity for all the powers concerned. Notwithstanding her Chinese exclusion laws,

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<sup>7</sup> The United States had aided China to suppress the Coolie trade, but had found it very difficult to prevent the emigration of Chinese under false pretences, so long as they were prohibited from leaving the country freely. [See Sen. Exec. Doc. 22, 35-2, p. 657.]

<sup>8</sup> In 1870 President Grant concurred with the opinion of Germany that the combined action of the powers should end piracy in Chinese waters. In 1871, when there were unsettled questions growing out of Chinese opposition to Christianity, some urged measures that would teach China a lesson which she would long remember. In 1867-69 there had been local outrages against foreigners. A crisis was reached by the massacre at Tientsin. France asked redress. China prevaricated and delayed, then promised to pay an indemnity, and finally refused to pay, demanded the abolition of schools for the education of females, and insisted that males should not be taught doctrines opposed to those of Confucius. She also desired to consider missionaries as Chinese subjects, and to prevent the access of women to the empire in that capacity. *The Nation* (Aug. 17, 1871) urged that the United States, though not engaged in religious propagandism, should not hesitate to use force, or to unite with other powers, if necessary, to induce China to recede from her position.

she has always stood well at Peking. Her efforts in behalf of an open door are regarded as distinctly in the interest of the integrity of the Chinese Empire. Her influence in the Orient has been greatly increased by the occupation and acquisition of the Philippines. In case the other powers, by their rivalry and spheres of influence in China, should attempt a policy of partition, she probably would not allow treaty rights and general interests to be sacrificed to such schemes of aggrandizement. She might even call in the Monroe doctrine in defence of her course.

Secretary Hay, on entering upon the duties of Secretary of State, saw that the inevitable retention of the Philippines would enable the United States to secure her policy in China and the East. After signing the treaty of Paris, he took steps to obtain from foreign powers, having "spheres of influence" in China, a recognition of our treaty rights to an open door. Some of the powers intimated that instead of a written assurance they would allow the United States a "sphere of influence," but Hay refused to participate in the partition policy. While avoiding an alliance with England or a treaty with any of the powers respecting a policy in China, he has insisted that the foreign powers, by treaties with each other and with China, should give a written guarantee of an open door.

In the recent Chinese crisis, while cooperating with the allies in the advance against Peking, to protect the foreign legations, the United States has had no territorial designs. She desires an open door to the trade of all China, and not a restricted sphere of influence over any part of it. She consistently strives for the larger field of commercial opportunity unlimited by territorial boundaries. If, through her prestige as a territorially disinterested power, she can prevent partition, restore peace to the Empire, and be assured of the protection of American rights and lives, she will have the reward or compensation which comes from the performance of duty by a necessary activity which has left our traditions unendangered.

**Corea.**<sup>100</sup>—Corea, with a policy of exclusion and inclusion, remained for ages in a state of seclusion. About the beginning of 1868, Frederick Jenkins, an American, who had served as interpreter at the United States consulate at Shanghai, sailed to Corea on the *General Sherman* with an expedition which he had organized to rob the tombs of the deceased Corean sovereigns as a means of securing a ransom. The conduct of some of the crew on landing excited the Coreans to kill eight of them and destroy their vessel. The Corean Government, desiring to explain the circumstances connected with the affair, and contemplating the expediency of securing a treaty of friendship and commerce, in April, 1868, sent commissioners to Mr. Seward, the United States consul-general at Shanghai, for consultation.

After considerable correspondence, and with the assurance from the Peking Government that Corea's tributary relation to China did not prevent her from making treaties, F. F. Low, United States Minister to China, accompanied by Mr. Seward and Rear-Admiral Rodgers, with a squadron of five vessels, went to Corea in April, 1871, by instructions from Washington, and made an attempt to negotiate a convention securing rescue and protection to our shipwrecked mariners and property.<sup>101</sup> They arrived in the Salu river April 25, and on May 29, in a friendly manner, informed the officials of their purpose to continue up the river to make surveys. The officials made no objection to the surveys, but said the king was averse to making treaties. On June 1 several surveying vessels were fired upon from forts, which they soon silenced. The Coreans stubbornly refusing to offer an apology, on June 10 an expedition of nearly 1000 men, sent to avenge the insult, destroyed forts and batteries and killed 253 Coreans, who were then glad to fall back.

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<sup>100</sup> W. E. Griffis: *Corea: the hermit nation*. 1882.

<sup>101</sup> President's Message of Dec. 1871, and accompanying documents.

<sup>102</sup> Pamphlet at Navy Department, on "Expedition to Corea, 1871."

Before leaving, Low made another attempt to open negotiations with the Government, but the letter to the king was returned unopened, and he was informed that no one dare convey his letter to Seoul. Rodgers, after further efforts appeared useless, went to Chefoo to await orders from the United States. Though the expedition had only contemplated peaceful negotiations, some hoped the powers would take united action against this warlike people; but the Washington Government, seeing no hope of accomplishing anything without a display of force, decided to postpone further negotiations.

After the bloodless revolution of 1874, which deposed a tyrannical usurping ruler, the Koreans became more interested in foreign nations and better acquainted with their policies; and, after a war with Japan, which opened several ports to Japanese commerce, notwithstanding ancient laws, they began to visit other countries. Secretary Frelinghuysen, seeing favorable conditions for renewing negotiations, and considering that the independence of Corea was regarded as established, resolved again to make an effort to obtain a treaty with the land of the Morning Calm, and intrusted the delicate mission to Admiral Shufeldt, who, on May 22, 1882, concluded a treaty securing the opening of certain ports to our commerce, aid and protection to our vessels and seamen, and safety to our citizens while in Corea. Lucius H. Foote, who, in May, 1883, became the first United States minister to Corea, made a favorable impression as to the friendly purposes of the American government, and relations since have been cordial and harmonious.

For 2000 years Corea has had a government based on the spoils system. In the almost thirty centuries during which she has patiently played a negative part, trying to steer between the Scylla of China and the Charybdis of Japan, she has been buried beneath a mass of worn-out, alien (Chinese) ideals—legal, religious and social—which have almost crushed her spontaneity. She cannot be ex-



humbled, disinterred, and reclaimed without a process of education. In the riot of December, 1884, some of the liberals inaugurated a hurricane of reform which lasted for forty-eight hours, but they failed in the attempt to condense centuries of evolution into a few hours.<sup>200</sup> The need of reforms in the administration and finances of Corea furnished an occasion for the events which caused the recent Chino-Japanese war, since which a reaction has largely transferred to Russia the influence previously exerted by Japan in Corea; but Japan expects to be a dominant force in guiding the destiny of both Corea and China.

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<sup>200</sup> Foreign Relations, 1885. Percival Lowell: "The coup d'état in Corea." *Atlantic Monthly*, vol. lviii, 1886.

## CHAPTER VIII.

### AMERICANIZATION OF HAWAII.

The interests which the United States suddenly acquired in California, the development of Oregon, and the prospects of closer communication with Asia, increased the importance of the earlier American policy to prevent foreign colonization or control of the Hawaiian Islands, where American elements had predominated from the earliest days of foreign interests there, and led the American Government to contemplate the annexation of the islands as a possible contingency necessary to American interests.

American influence in the islands was considerable by 1820. In March of that year, missionaries from Boston arrived in the *Thaddeus* to begin their religious and humanitarian work, and in the following September President Monroe appointed John C. Jones as United States agent, for commerce and seamen at Hawaii, to make reports to the Department of State. The missionaries were hospitably received and found conditions favorable for their labors. Kamehameha I., the "Napoleon of the Pacific," who, by 1795, had practically asserted his control over all the septinsular kingdom, had died in 1819, leaving a consolidated kingdom to his son Liholiho, who succeeded him as Kamehameha II. The will of the chief was still almost absolute. There had not yet developed a code of laws, or government regulations, courts of justice, or the acknowledged right of persons to own property. Neither was there yet a written or systematized language. But the people were preparing to be transformed by the institutions of civilization. Under the influence of foreigners, they became infidels to the old religion. After disobeying old

religious rites they found that their health was as good as before. Under Liholiho, "tabu" and idolatry were abolished by law.<sup>1</sup>

The missionaries, who soon exerted considerable influence with the native government, were opposed by foreigners, who finally led the king into dissipation and debts which caused him to increase taxes. Richard Charlton, the British consul-general at Hawaii, was accused of placing himself at the head of the lawless and depraved class of foreigners, and trying to induce the chiefs to make no laws without the approval of the British Government.<sup>2</sup> He showed an open antagonism to the American missionaries and American influence on the islands, tried to organize the discordant elements into an anti-missionary party, and, later, he favored the introduction of a rival religion by French Catholic priests, who were appointed by the Pope in 1826. The Hawaiian Government remained friendly to the Protestant missionaries, and in April, 1831, issued a decree banishing the Jesuits; it was inclined to persecute those who had embraced the Roman faith, though the severity of the persecution was lessened by a visit of the *Potomac* in 1832.<sup>3</sup>

Toward the close of 1832 political troubles increased. The

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<sup>1</sup> J. J. Jarvis: History of the Sandwich Islands.

<sup>2</sup> In 1823 Liholiho, suspecting Russia of having designs, decided to ask England and the United States for protection and visited London, where he died, and from whence his remains were conveyed to Honolulu in the *Blonde* under the command of Lord Byron. [G. A. Byron: Voyage of the *Blonde* to the Sandwich Islands, 1824-5. London, 1826.] George IV. promised protection against foreign aggression. British influence had long before shown itself. In February, 1793, Vancouver, returned to the islands and endeavored to secure an end to the internal dissensions that were reducing the population. A year later, a meeting of the great chiefs decided to cede Hawaii to England as a protectorate, and Mr. Puget went ashore, hoisted the British colors and took possession.

<sup>3</sup> About the same time a writer in the London Metropolitan Magazine proposed that the British Government should take possession of the islands as a matter of expediency. [J. N. Reynolds: Voyage of the *Potomac*, p. 416.]

young King Kamehameha III., partly through the influence of Charlton, had thrown off the restraints of his elders and abandoned himself to dissipation and debauchery. He associated with the licentious, and delegated his royal power to Kaomi, an unprincipled Tahitian. Shameless dances were revived, family ties were sundered, and drunkenness ruled. Kinau, the eldest sister of Kamehameha I., stood for decency, but she could not obtain the ear of the king.<sup>4</sup>

In July, 1839, Captain Laplace, of the French frigate *Artemise*, forced Kamehameha III. to allow the return of the priests, the entire freedom of Catholic worship, and the introduction of intoxicating liquors into the islands. Many priests now came, and trouble soon arose between them and the Protestants. French and English grievances continued.

In 1842 a French vessel arrived with new demands, to which the king replied that he had sent an embassy to France to negotiate a treaty. The English consul, Charlton, also presented a list of grievances,<sup>5</sup> causing the king (July, 1842) to ask for his removal and to send a communication to the United States, England and France to negotiate new treaties and obtain a guarantee of independence and neutrality.

Notwithstanding the reports of progress in the islands and the increase of American interests there, the United States sought no exclusive control or advantage, but desired that American rights should be respected and guarded. Webster, in his reply to the Hawaiian commissioners, stated that the government of Hawaii should not be an object of interference by foreign powers,<sup>6</sup> but advised them to begin diplomatic operations in England.

<sup>4</sup> Laura Fish Judd: Honolulu, etc., 1828-61. N. Y., 1880.

<sup>5</sup> Charlton had a title to some Hawaiian lands, and claimed the right to transfer it, but the courts of Hawaii decided against him and attached his land. Though the Government made no attempt to eject him from the lands, he claimed that his rights had been infringed, and complained to the British Government.

<sup>6</sup> Wilkes, who visited the islands on his exploring expedition, said: "Fortunately for the Sandwich Islands they have no port

Desiring to defeat the objects of the embassy, Charlton secretly went to England, leaving a hostile deputy, Simpson, whom the king refused to recognize until he was forced to do so by Lord George Paulet, of the British navy, who arrived February 10, 1843, threatened the authorities, took possession of the islands under the British flag,<sup>7</sup> seized all lands claimed by Charlton, abrogated laws against vice, and raised an army of natives. The king, after executing the forced cession, wrote President Tyler, protesting and asking the United States to interpose.

The United States, when informed of this affair by the communication from the Hawaiian king, declared that no power ought to take possession of the islands either as a conquest or for colonization.<sup>8</sup> She took steps, through Everett, to notify England that the United States would regret if England or France should adopt any other than a pacific, just and conservative course toward Hawaii. The attitude of the United States doubtless influenced England and France to recognize Hawaiian independence and (November 28, 1845) to enter into a joint declaration agreeing never to take possession even under a protectorate. England promised to remove Charlton, and a few years later France restored \$20,000 that had been extorted by the French captain in 1839.

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that is defensible against a strong naval force, and therefore their importance will be comparatively small in a political point of view. No foreign power, in fact, could well hold them without great expense and difficulty. . . . They will no doubt be left in the enjoyment of their neutrality. . . . It is the interest of the United States that they should maintain the neutrality that they seek to establish." [C. Wilkes: *Voyage Around the World*, 1838-43. N. Y., 1851.]

<sup>7</sup> In July, however, the British admiral, Thomas, arriving, disapproved the acts of his ambitious subordinate, refused to accept the cession of the islands, and proceeded to restore the king. Although France had recently seized the Marquesas, the British Government disavowed the seizure and cession of Hawaii.

<sup>8</sup> On June 13, 1843, Legare wrote Everett that the United States might feel justified in interfering by force to prevent Hawaii falling, by conquest, into the hands of one of the great powers of Europe.

In March, 1843, the United States Government, feeling the need of a competent medium of communication and of closer and more friendly relations, appointed George Brown, of Massachusetts, as a diplomatic official. The latter was well received, but soon had occasion to insist that Americans accused of crime should have the right of trial by a jury composed entirely of foreigners, and to protest that the British treaty of February, 1844, discriminated against the United States. He was recalled at the request of the Hawaiian king. Mr. A. Ten Eyck, who succeeded him in 1846, with instructions to make a treaty, continued to insist upon the right of trial by a jury of foreigners until, in 1848, feeling that relations were on the point of rupture, and that President Polk had neglected him, he resigned, and was succeeded by Charles Eames. Before the latter reached Hawaii, Mr. J. J. Jarvis and Secretary Clayton, at Washington, had concluded a treaty of friendship, commerce, navigation and extradition (December 20, 1849), which was ratified by the United States Senate the following February, exchanged in August and proclaimed in November.\*

Foreign consular and diplomatic representatives continued to threaten interference with internal affairs of Hawaii. England revived old claims. The French consul reopened old disputes and presented new ones, causing the king to ask his recall. In August, 1849, a French frigate arrived to support the demands of the consul. Against the urgent protests of English and American consuls, a French force, under pretext that provisions of the French-Hawaiian treaty had been broken, seized buildings, destroyed property, blockaded the harbor and took the king's yacht. The admiral had notified the United States consul, Turrell, that the French desired only reparation, and had no designs

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\* Andrew H. Allen: *Relations between the United States and the Hawaiian Islands 1820-93.* [Sen. Exec. Doc. 77, 52-2, Feb. 17, 1893.]

for occupation or protectorate, and he had neither lowered the Hawaiian flag nor raised that of France. The king, through Turrell, again invoked the good offices of the United States to maintain his sovereignty, and sent J. J. Jarvis as special commissioner to procure the friendly mediation of President Fillmore. Secretary Clayton, uncertain whether France would adopt the same policy with Hawaii as with Tahiti, wrote Rives at Paris that, although the Hawaiian Islands were not coveted by the United States, their relations were such that the United States could never with indifference allow them to pass under the dominion or exclusive control of any other power. Later, the French Government disavowed the action of its admiral, but on learning that a commission had gone to the United States and England to make new treaties, sent out a counter commission to renew the old demands. A French vessel arrived December 13, 1850, and remained three months to harass and interfere.

In March, 1851, Severance wrote Webster that the popular representative body recently elected by the native votes, and also the executive and judiciary, were composed largely of natives of the United States; that the king and his government, fearing France, were privately considering the subject of annexation to the United States, and that a United States ship-of-war should be present to prevent the fear of disturbances which had operated to injure American commerce, immigration and land-purchases. He said that the Americans who had opposed the government and the missionaries, on account of laws against licentiousness and drunkenness, were decreasing in number, and would join the missionaries in rallying under the United States flag should it once be raised. Judging from foreign relations and the precarious state of the king's health, he was uncertain whether the native government could last long. Seeing the value of Hawaii, with her public lands and no public

debt, and with proposed steam communication with San Francisco, which could be connected with Washington by telegraph, he hoped that Webster would not object to a political connection on account of distance.

On March 10, 1851, the king and privy council of Hawaii issued a proclamation placing Hawaii under the protection of the United States, and on June 21 the provisional cession was adopted by both Houses of the Hawaiian Parliament. Webster, however, on July 14, directed Severance to return the deed to the Hawaiian Government. He still advocated the past policy of favoring the independence of the islands, at least until pressed by some necessity in which events should occur to give the subject a new aspect and an increased importance. Referring to Americans who were settling in Hawaii, he informed Severance that they thereby ceased to be citizens of the United States, saying: "You will, therefore, not encourage in them, nor indeed in any others, any idea or expectation that the islands will become annexed to the United States. All this will be judged of hereafter as circumstances and events may require by the government at Washington." The United States, however, faithful to its original assurances, scrupulously regarded the independence of the islands and was unwilling to consent that European powers should occupy them or enforce unjust demands inconsistent with their independence. The Navy Department received instructions to keep the Pacific armament in a position requisite for the preservation of the honor and dignity of the United States and the safety of the government of Hawaii.

France, checked in her plans, expressed surprise at the American attitude, and disclaimed any intention of improper interference, or of assuming sovereignty in the islands.

The increasing American influence in Hawaii<sup>10</sup> excited

<sup>10</sup> Feeling that the United States had become an arbiter in the affairs of the Pacific, a writer in *De Bow's Magazine*, in November, 1852, asked whether Hawaii, who requested our protection, was not as necessary to the United States as Cuba.



the jealousy of both France and England. In September, 1853, Secretary Marcy, while disclaiming any intention of the United States to exercise exclusive control, indicated that she would not allow other powers to exact special political or commercial privileges, or to establish a protectorate over the islands.<sup>11</sup> In the following December, while hoping to acquire Lower California, he informed the American minister to France that the existing condition of the islands made it appear inevitable that they must come under the control of the United States. Sailor riots, filibustering expeditions from California and internal strife and the demands and threats of the British and French had caused a rising annexation sentiment at Honolulu.

Being informed that the British and French would forcibly resist a transfer of the islands to the United States,<sup>12</sup> Marcy (December 16) instructed Mr. Mason, at Paris, to sound the French Government upon its policy or views. Feeling that the Hawaiian Islands could not long remain under the existing rulers, or under the control of the inhabitants, and that their geographical position and their connection with Pacific industries in which American interests were paramount<sup>13</sup> would inevitably result in their control by the United States Government, he urged that it would be fair for England and France to acquiesce in any transfer made to the United States by fair means.

While the United States had long expressed her policy of maintaining the independence of the Hawaiian Islands, she had never entered into any international agreement which would prevent her from negotiating a treaty of annexation with the Hawaiian Government. She was free to encourage any movement originating in Hawaii.<sup>14</sup> In

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<sup>11</sup> Instr. Hawaii, Sept. 22. Marcy to Gregg.

<sup>12</sup> He also had an intimation that Russia had an eye on the islands, but had little fear of interference from that quarter.

<sup>13</sup> 650 vessels were at this time engaged in whaling, and mostly in the Pacific.

<sup>14</sup> Washburn of Me., on Jan. 4, 1854, made a speech in Congress, in which he favored expansion to include Hawaii. 29 Con. Globe, 33-1, Appendix, pp. 55-59.

February, 1854, Marcy received a letter from Minister Gregg stating that the king, fearing his inability to maintain the independence of the islands, had made advances indicating that he might offer to transfer the sovereignty to the United States. On April 4 he<sup>king</sup> authorized Gregg, whenever the emergency should arise, to negotiate for a complete transfer of the islands to the United States as a *territorial possession*, and suggested that \$100,000 might be given to the chiefs as compensation for losses which they would sustain.

Negotiations were opened with the Hawaiian authorities, who soon showed an "inveterate prejudice against a territorial form of government," and, after approving a form of treaty, secured delay by urging the necessity of consulting the king, who was ill.<sup>18</sup> Gregg, fearing a crisis, desired prompt negotiations and immediate transfer, believing that after the cession, provisional or permanent, was once made the flood of emigration from California would soon follow the raising of the American flag, Americanize the islands, and check future British and French pretensions.

In September the king seemed satisfied with the proposed form of treaty, but the British<sup>19</sup> and French consuls at Honolulu protested, and the admirals of a combined British and French squadron warned the king that a cession to the United States would lead to difficulty. The king proceeded with the negotiations, but insisted until he obtained clauses securing additional compensation, and providing that the islands should be admitted as a State of the Union.<sup>20</sup> On

<sup>18</sup> Gregg to Marcy, Aug. 7, 1854.

<sup>19</sup> Gregg said that publications in the *New York Tribune* of July 20, unfortunately aided the British in their attempts to prejudice the Hawaiians against the American policy of Marcy and Gregg. (September 15, 1854.)

<sup>20</sup> Marcy felt that the Senate would never approve the clause providing for statehood in the Union; but, on January 31, 1855, he instructed Gregg that the United States Government was willing to receive the transfer of the sovereignty of the islands with all provisions as to the rights of the inhabitants, and would desire their prosperity.

September 18, General Miller, the British consul-general, strongly deprecating annexation, urged the king not to execute the treaty." The latter remained friendly to the United States, but died (December 15) while negotiations for the final execution of the treaty were still pending.

Kamehameha IV., who became king on January 11, 1855, became opposed to the completion of the treaty, and was probably influenced by the English relationship of Emma Rooke, who, in 1856, became Queen Emma. In 1855 he participated in the negotiations of a treaty of reciprocity which the United States afterwards failed to ratify. Until his death (November, 1863) he remained strongly predisposed to favor the British in preference to the Americans. The latter began to suspect that British diplomacy was preparing Hawaii for a British regency at the death of the king, with the intention of making it a cotton-growing colony.

Notwithstanding the decline of the whale fisheries after 1854, and the growing influence of the British with the Hawaiian royal family, American influence in the islands was kept alive through the channels of industry. In 1857 more than one-half the imports at Honolulu were from the United States. In 1863, four-fifths of the commerce connected with the islands was American. Interest was increased by the rise of the sugar industry" which, at the close of the American civil war, became the basis for the agitation of a treaty of reciprocity with the United States.

On October 9, 1863, Minister McBride, commenting upon the extensive American commercial and sugar interests in the islands, wrote Seward that their control by the United States Government would be "far more valuable than the ownership of both Cuba and the Bahama Islands." His successor, Edward M. McCook, on September 3, 1866, informed Secretary Seward that, although many of the American residents were dissatisfied with the king and cabinet,

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" Gregg to Marcy, Oct. 2, 1854.

" Settlers had cultivated sugar cane at a very early day, and, by 1853, they were planting nearly 3000 acres.

the influence of the American Government, so far as he could see, was "all that it had ever been," and that the spirit of the people was "heartily republican and thoroughly American." Suggesting that the king would probably die at an early date without a successor, and that the arbitration of the destiny the country would devolve upon the United States, he added "And when this dynasty ends . . . I am sure that if the American Government indicates the slightest desire to test in their islands the last Napoleonic conception in the way of territorial extension, you will find the people here with great unanimity demanding by votes, freely expressed, annexation to the United States."

On May 21, 1867, McCook, by written invitation of the Hawaiian Government, negotiated a treaty of reciprocity which was more liberal than that of 1855. The king, probably by the advice of Varigny, who was his minister of foreign affairs, objected to the presence of the United States ship *Lackawanna* in Hawaiian waters, and delayed the ratification of the treaty. After the departure of the vessel, he convened the legislature and approved the treaty on July 30. Three days later he sent Captain Waterman as an envoy to Japan to attempt negotiations for a commercial treaty—a project which McCook urged would defeat the objects of the treaty with the United States by diverting into another channel the trade we wished to secure,<sup>20</sup> and decreasing our commercial and political influence on the islands.

McCook regarded the treaty of reciprocity as a means of making American influence dominant on the islands and in line with a policy of future annexation. President Johnson, stating that there was a growing conviction that our constitutional system is strong enough to comprehend possessions beyond the continent,<sup>21</sup> considered the treaty a guar-

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<sup>20</sup> He desired to secure all of the trade of China and Japan as well as that of Hawaii. McCook to Van Valkenburg, Aug. 3, 1867.

<sup>21</sup> The establishment of a regular steamer service between San Francisco and China in 1867 shortened the communication between the United States and Hawaii. Previous communication had been by whale ships via Cape Horn.

antee of foreign forbearance in Hawaii until the people of the islands should voluntarily apply for admission into the Union. There were some who opposed reciprocity on the ground that it would "hinder and defeat early annexation," but this probably does not explain the motive of the Senate, which rejected the treaty after delaying action until June 1, 1870.

On July 13, 1867, Secretary Seward authorized McCook (at the latter's own suggestion) to sound the Hawaiian authorities on the subject of annexation; to ascertain the probable conditions and confidentially to receive overtures. In the following ~~September~~ he wrote him that lawful and peaceful annexation of the islands, with the consent of the people there, was desired, and that in case of any conflict between the policy of reciprocity and that of annexation the latter was "in every case to be preferred." In the summer of 1868 he was informed that the annexation sentiment in Hawaii was so strong that immediate occupation, under some pretext of defending American rights, would hardly raise a single remonstrance; but he saw that the public mind was so much fastened on domestic questions (reconstruction) that it would hardly entertain "the higher but more remote questions of national extension and aggrandizement," and prudently avoided giving encouragement to the Hawaiian-American annexationists.

On September 14, 1869, in the course of a confidential conversation with the King of Hawaii, McCook stated that the United States, needing a naval depot between the Pacific coast and China, probably would be willing to pay a liberal price for the cession of any or all of the islands; but the king said it was not the policy of the government to cede either of the four larger islands, and that the United States would have no use for the smaller ones which had no harbors.

On February 25, 1871, Mr. Henry A. Pierce, United States minister at Honolulu, wrote to Fish suggesting that it was a favorable time to secure the political destiny of

Hawaiian Islands by annexation to the United States. In support of this policy, he said the majority of aborigines, creoles, and the democratic New England settlers, were anxious for annexation; that the fifteenth amendment to the United States Constitution had increased the popularity of the project; that the strategical position of the islands for a naval or coaling station, and for the protection of United States commerce in the Pacific was an important consideration; and that His Hawaiian Majesty, whose fatness made his breathing difficult, was likely to die from suffocation without leaving a successor to the throne. President Grant, who was urging the annexation of San Domingo, confidently referred this despatch to the Senate and invited an expression of its views, but he did not obtain the encouragement necessary to enable him to express the policy of the Government upon the subject.

In February, 1873, as a means of removing Hawaiian lukewarmness and fear of repulse, Pierce urged an expression of the American policy. Though he thought annexation probably would never be presented or adopted as a measure of the Hawaiian Government, he said that the planters, merchants and foreigners, whenever great interests required it, would induce the people to establish a republic, and then ask for admission to the American Union. On March 25, Secretary Fish, contemplating that the importance of Hawaii and the decadent tendency of the Hawaiian Government might force the United States to consider its future, instructed the United States minister to secure full and accurate information upon the population, industries, resources and debt of Hawaii, and learn the views of the Hawaiian authorities concerning the policy, manner, terms, and conditions of annexation. Regarding the American policy, he said: "While there are . . . many and influential persons in this country who question the policy of any insular acquisitions, perhaps even of any extension of territorial limits, there are also those of influence and of wise foresight who see a future that must extend the jurisdiction

and the limits of this nation, and that will require a resting spot in mid-ocean, between the Pacific coast and the vast domains of Asia which are now opening to commerce and Christian civilization." Concerning the reported strong friendly sentiments in Hawaii, he said: "You will, without committing the Government to any line of policy, not discourage the feeling in favor of annexation."

Major-General Schofield, of the United States Army, had already been instructed in June, 1872, to examine the defensive capabilities and commercial facilities of Hawaiian ports. In a report to the Secretary of War (May 8, 1873), he stated that while the government and people of these islands were probably not then prepared to consider the question of annexation, even if the United States desired to propose it, they favored the cession of Pearl river harbor as a means of securing a reciprocity treaty.

Kalakaua, whom the legislative assembly chose as king at the death of Lunalilo<sup>a</sup> in February, 1874, showed a disposition to favor the American influence in the islands. During the riots that followed his election, he requested that an armed force be landed from American vessels to preserve order. In 1875 he visited the United States, and his government negotiated a treaty of reciprocity which granted certain exclusive privileges to the United States, and was, for several years, the source of protests by Great Britain.

The relation of the islands to the United States and the North Pacific caused the American Government to seek an American solution for Hawaiian problems. In 1881, Secretary Blaine, in his instructions to Minister Comly, said that the gradual and seemingly inevitable decadence of the native race might induce the United States to change her policy of commercial assimilation to one of colonization and material annexation; and he desired Hawaii to coop-

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<sup>a</sup> Lunalilo had succeeded Kamehameha V. whose line ended in 1872.

erate in replenishing her vital forces by the passage of favorable homestead laws that would encourage the enterprising Americans to emigrate to the islands. Secretary Frelinghuysen, though he did not consider it any part of the American policy to interpose to prevent the annexation of the outlying archipelagoes and islands of Polynesia<sup>22</sup> by foreign powers to whose colonial system they were geographically allied, said (1883) the United States "could not view with complacency any movement tending to the extinction of the national life of the intimately connected commonwealths of the Northern Pacific."

Secretary Bayard's policy was to prolong the reciprocity treaty and quietly wait until American planters and industries flowing to the islands should prepare for a "perfectly feasible policy of acquisition." By a convention concluded in 1884 and ratified in 1887, reciprocity was renewed for seven years, and the United States was given exclusive right to enter Pearl harbor, in Oahu, and to establish a coaling station there. Though the grant of the harbor did not impair the political sovereignty of Hawaii, it induced the British to propose that a tripartite arrangement between the United States, Great Britain and Germany should guarantee the neutrality of the islands. Bayard, seeing no necessity for joining in such an arrangement, replied that one of the articles of the reciprocity treaty inhibited a cession of any part of Hawaiian territory without consent of the American Government.

The possibility of a crisis under which it would be the policy of the United States to take possession by military occupation had been contemplated for years. In February, 1874, Minister Pierce recommended that a United States vessel should be stationed at Hawaii at all times. In May,

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<sup>22</sup> In October, 1883, there was some agitation in Australia in favor of protection and eventual occupation of the New Hebrides, the Solomon, and other adjacent groups. The Hawaiian Government issued a protest, and attempted to secure the cooperation of the United States Government.



1889, his successor, G. W. Merrill, suggested that in view of the large American interests, the absence of cable communication, and the approach of a political campaign, the United States should keep a vessel in Hawaiian waters. In accordance with this suggestion, the *Adams* was soon ordered to Honolulu. The wisdom of such a policy was proven by subsequent events. On July 30, a band of natives, desiring a larger share of official patronage, and believing that foreign residents and cabinet officials were endeavoring to influence political affairs so as to destroy Hawaiian autonomy,\* made an unsuccessful attempt at revolution. By permission of the native government, about seventy marines were landed to protect property and influence the restoration of order. Many American residents hoped that revolutionary attempts and frequent turmoils would hasten annexation.

The danger of further disturbance was increased by the election of February, 1890, which indicated a reaction from the reform constitution established by the bloodless revolution of 1787. The opposition, aided by the king, who hoped to recover part of his former autocratic power, gained votes by appealing to race prejudices and succeeded in electing many who were not friendly to the United States. Minister Stevens, expecting factional disturbance, recommended that the United States should order a war vessel to remain at Honolulu, and soon urged the establishment of a coal depot.

The dissatisfaction growing out of the change of rulers in 1891 increased annexation sentiment in Hawaii. King Kalakaua, who died in January, was succeeded by his sister, Liliuokalani, widow of an American resident, who caused much discontent by her attitude toward the legislature, and her subjection to Marshal Wilson, a half-caste Tahitian.

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\* The general celebration of the Fourth of July, at Honolulu, as described by Minister Merrill in a despatch of July, indicates that there was a strong American sentiment there.

On February 8, 1892, Stevens considered that annexation was the only remedy to relieve the feverish political situation and prevent the danger of England obtaining a hold a month later. Expecting a revolution against the queen's government, he intimated that the continued presence of a United States ship-of-war was necessary, and in view of possible contingencies, asked for instructions as to duties of himself and naval commanders. During the summer, naval commanders reported that conditions in Hawaii, notwithstanding the influence of the British element, seemed "to point toward an eventual request for annexation."

On November 20, in a confidential report of the financial, agricultural, social and political conditions, and the commercial and naval importance of the islands, Stevens referred to the strong inclination of Europeans to gain possession of islands in the Pacific, and stated that Hawaii was at the parting of the ways and must either become Asiatic or American—either like Singapore or Southern California. He declared that in order to subserve American commercial and political interests it was absolutely necessary either to adopt a vigorous policy of annexation or to secure cable connections with at least an implied American protectorate over the islands.

On January 15, 1893, Queen Liliuokalani attempted to promulgate a new constitution, giving herself more power, depriving foreigners of right of franchise, abrogating the House of Nobles and giving the queen power to appoint a new House. Foreigners and others strenuously opposed, and a peaceful revolution resulted in the deposition of the queen. By request of the unopposed *de facto* government, marines from the *Boston* were landed to preserve order,<sup>2</sup> and Minister Stevens, on February 1, assumed protection of the island. Secretary J. W. Foster commended his action so far as it accorded protection to life and property, but disavowed it so far as it might appear to overstep

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<sup>2</sup> Lucian Young: *The Boston at Hawaii*, Washington, 1898.

that limit by setting the authority and power of the United States above that of the government of the Hawaiian Islands in the capacity of a protector, or impair in any way the sovereignty of the Hawaiian Government."<sup>a</sup>

The provisional government, which was recognized by Minister Stevens and all foreign governments except England, had already sent commissioners to Washington and negotiated a treaty of annexation, which President Harrison, on February 15, sent to the United States Senate for confirmation. While the treaty was yet pending in the Senate, President Cleveland was inaugurated, and ex-Queen Liliuokalani, having complained that the recent "revolt" had been aided by United States troops, he soon recalled the treaty from the Senate and ordered an investigation of the revolution."<sup>b</sup> On April 14, 1893, awaiting action by Congress, President Cleveland withdrew the protectorate established by Stevens on February 9.

Refusing to reinstate the queen, the leaders in Hawaii on July 4, 1894, dissolved the provisional government and proclaimed a republic. A movement for annexation was vigorously pushed, and on June 16, 1897, a treaty of annexation was sent to the Senate by President McKinley. The Senate did not act, but after the opening of the war with Spain, a joint resolution in favor of annexation was passed by Congress and was signed by President McKinley on July 7, 1898, soon after the occupation of Manila, where the American flag now floated over the fortifications of the Philippines.

NOTES ON HAWAIIAN CONSTITUTIONAL HISTORY.—American influence is seen in Hawaiian constitutional development.

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<sup>a</sup> For political correspondence, 1889-93, see H. Exec. Doc. 48, 53-2, Dec. 18, 1893. [Reprint of Sen. Exec. Docs. 76 and 77, 52-2, Feb., 1893.]

<sup>b</sup> Commissioner Blount's report is in H. Exec. Doc. 47, 53-2, Dec. 18, 1893. Also, see Sen. Rp. 227, 53-2, Feb. 26, 1894 [773 pp. and maps], and Foreign Relations, 1894, Appendix ii.

In 1839, American missionaries and ex-missionaries persuaded Kamehameha III. to sign a Bill of Rights, and in October, 1840, they induced him to grant a constitution, giving up his absolute power, providing for four departments of administration, and creating a single legislative body composed of hereditary nobles and seven representatives formally elected by the people. This constitution, Mosaic in character, showing derivation from the Pentateuch, the British Government and the American Declaration of Independence, lasted for twelve years. By 1851 the majority of the representatives, executive officials and judges were natives of the United States.\*

In 1852, the Government agreed upon a revised and much more liberal constitution, which existed until August, 1864. It still contained some of the levitical elements, and opened with "God hath created all men free and equal." It divided the legislative assembly into two houses, both of which were enlarged; provided for manhood suffrage and elections by ballot; denied political rights to any who should import slaves; and established a Kuhina-nui to regulate the government machine and counsel and restrict the king. The Kuhina-nui was usually a woman. She and the king each had a negative upon the other's acts. She had charge of the Great Seal, the royal standard and the national flag, and performed the duties of the king at the latter's death.\*\*

In November, 1863, Kamehameha IV., who had reigned since 1854, died, and was succeeded by his brother, Prince Lot, who ruled until 1872, as Kamehameha V. The new king, showing a tendency toward the former royal absolutism, was opposed to part of the constitution of 1852, and refused to take the oath which it prescribed.\*\*\* Seeking the

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\* In 1850, the king recommended a new constitution and appointed a committee of three to frame a model. Dr. Judd was the leading member.

\*\* Eclectic M., Apr. 1865.

\*\*\* His cabinet consisted of a Scotchman, an Englishman, a Frenchman and an American.

quickest way to amend the constitution so as to abolish universal suffrage and place voting upon an income and property basis, he called a convention, which was opened in July, 1864. This convention, of which the king was president, consisted of twenty-seven delegates and sixteen nobles headed by the Kuhina-nui. Mr. Judd, who was made secretary, appointed Anglo-Saxons to fill the positions of chaplain, reporter, etc. Many American missionaries, fearing that the king desired to assume extra powers, had raised the cry of alarm. When the convention met, the American party led by Dr. Judd (the ex-minister) and his son (the secretary) and three or four others, stood for manhood suffrage, and opposed the policy of the king, whose views, delivered in both English and Hawaiian, were seconded by most of the nobles.

There were some remarkable speeches. Honorable D. Kalana and others, pointing to the United States for illustration, urged that universal suffrage led to corruption at the polls, and insisted that it was not the purpose of the king to take away the poor people's rights. M. Varigny, on the part of the king, intimated that to give suffrage to the poor was like placing a razor in the hands of a baby or giving a candle into the hands of a man to carry into a powder magazine. The opposition, denying that poverty was any argument against suffrage, urged that the ballot was an incentive to work, and claimed that purity of elections existed in the United States.

After a week of debates, a decision was reached that all three estates should sit in debate in the same chamber and vote unitedly on rules or by-laws, but that constitutional subjects must first be offered and carried by the representatives (lower house), then receive the separate vote of the nobles and the sanction of the king. The opposition of the representatives caused business to move slowly, and the king, becoming impatient on account of the long discussions on "Article 62," and the failure to agree, after five weeks of fretful inculcation, declared it useless to prolong the session,

and claimed the right to abrogate the constitution of 1852. "I will give you a constitution," said he, and dissolved the convention.

On August 20 the promised constitution appeared. It omitted the "free and equal" clause; reversed the bicameral arrangement and returned to the single legislative chamber; abolished the Kuhina-nui; gave the king a larger place in the state; made the cabinet more responsible; excluded the ballot; required that representatives should own real estate worth \$500, or have an annual income of \$250, and that electors, besides possessing certain intellectual requirements, should own property worth \$150, or receive \$25 yearly rent and leasehold and \$75 income. This constitution existed until 1887, when the legislative powers of the crown became entirely vested in the representatives of the people. The attempt of Liliuokalani in June, 1893, to increase her power and deprive foreigners of the right of suffrage by a new constitution resulted in the revolution that made Hawaii a republic, and prepared the way for annexation to the United States. The present territorial government was established by act of Congress in 1900.<sup>1</sup>

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<sup>1</sup> See appendix.

## CHAPTER IX.

### RELATIONS IN SAMOA.

The attitude of the United States toward the Samoan Islands furnishes an instructive chapter in the evolution of national policy. Compared to its policy in Hawaii, the American Government until recently has shown little interest in securing a control over the islands in the South Pacific, but local conditions, together with the increase of American interests in the Pacific and the Far East, led us first to a policy of protection for Samoa,<sup>1</sup> and then to division and acquisition.

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<sup>1</sup> The Samoan Islands, located 4200 miles southwest from San Francisco, and 420 miles northeast of the Fijis, discovered in 1772 by a Hollander, are the largest and most populous Pacific group, with the exception of the Hawaiian Islands. Of the 13 islands in the group, only Savaii (700 square miles), Upolo (550 square miles), and Tutuila (55 square miles) are inhabited. The others are little more than barren volcanic rocks. The population is about 30,000, and the area about equal to that of Rhode Island. There are about 300 Europeans and Americans on the islands. The climate is tropical, and frequent thunder showers throughout the year supply the necessary irrigation for the rank vegetation. The products are bread-fruit, taro, yams, bananas, sugar, coffee, sea-island cotton, cocoanuts, etc. The lagoons and reefs abound in fish, which the natives catch with spears and nets. Both the import and export trade is in the hands of Germans. All accounts are kept in terms of United States currency. The natives are hospitable, open, amiable, brave and hardy and possess great mental ability, but are averse to labor. They speak a language similar to that of the Hawaiians. The principal amusements are quoits, card playing (casino), cricket and the *siva*, a kind of acting charade in which the life of the islands is represented in a very realistic manner by "living pictures." The actual *siva* is performed by girls, smeared with cocoa-nut oil, who frequently, under the excitement of their motions and contortions, divest themselves of all clothing. The marriage ceremony is very simple, and often there is no ceremony except the mere expression of a willingness to live together.

It was seen that the position of the islands, on the great trade routes between Panama and California, on the one hand, and Australia and the Orient, on the other, together with their strategic advantages, both political and commercial, were more important than the value of their trade. The harbor of Pango Pango (on the Tutuila), which is owned by the United States, is the best place in the South Pacific for repair and supplies and for a coaling and cable station. The harbor of Apia, under German control, though a safe port under ordinary conditions, has proven unsatisfactory in a severe storm.

Though an American consul had resided at Apia many years before<sup>3</sup> to protect American interests, our closer relations began in 1872, when Commander R. W. Meade, a United States navy officer, of the *Narragansett*,<sup>4</sup> on his own responsibility, entered into an agreement pledging the protection of the United States, stating that we were about to establish commercial relations with the islands by means of a line of steamers then plying between California, Hawaii, New Zealand and Australia, and desired a convenient coaling port.

Both parties to a dormant civil war, which had been pending in Samoa since 1870, interfering with the exports of the island and causing the natives to spend most of the time in sharpening their war knives and axes, expressed a wish to acknowledge the absolute authority of the United

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Polygamy has almost ceased. In case of divorce the young children go to the mother. Cooking is done by the men, and each person at the meal uses a bread-fruit leaf for a table, a mat for a chair, and the nearest post for a table napkin. The early social, political, and religious life of the Samoans is an interesting study. See George Turner's "Samoa a hundred years ago and long before," [Macmillan, 1884], and J. B. Stair's "Old Samoa," [London, 1897]. A good review of Turner's volume appears in the *Nation* [N. Y.] of August 21, 1884.

<sup>3</sup> See Senate Rp. Com. 148, 36-1.

<sup>4</sup> Geo. B. Rieman: Narrative of a cruise of the U. S. Str. *Narragansett*, Oakland, Cal., 1874, 43 pp. *Nineteenth Century*, Feb., 1886.



States, and on March 2 the Chief of Pango Pango "freely and voluntarily" signed a treaty with Commander Meade, granting the United States the exclusive privilege of establishing a naval and coal depot in the bay in return for the promise of friendly alliance and protection by the United States.\* In May, Grant, stating that he would not hesitate to recommend its approval, but for the protection to which it seemed to pledge the United States, sent the treaty to the Senate,<sup>1</sup> which failed to ratify it.

In 1873 the Department of State determined to obtain further information regarding the condition of Samoa. Colonel A. B. Steinberger, sent for this purpose, reached the islands in 1874. Under him the chiefs assembled a council, formed a constitution and laws for a united government, and again asked Grant to take the country under the protection of the United States. Steinberger, after making a voluminous report<sup>2</sup> on the fertility and resources and important position of the islands, was impatient to return, and the Government again sent him with the condition that he pay his own expenses. He received instructions, dated December 11, in which Secretary Fish doubted whether the importance of a commanding position in the Pacific was a sufficient consideration to satisfy the people that the annexation of the islands was essential to our safety and prosperity, and did not consider it expedient "to originate a measure adverse to the usual tradition of the Government."

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\*The treaty also provided for the protection of the persons and property of foreigners and foreign consuls, the regulation of port charges and pilotage, the prohibition of trade in intoxicating liquors and work on Sunday, the apprehension of deserters, and of foreigners from encouraging native females to prostitute themselves.

<sup>1</sup>On March 16, 1872, President Grant, in response to a House resolution, sent a reply of the Secretary of State of same date, stating that there were no papers in the Department of State to show that the inhabitants of the Navigators' Islands, in the Pacific had made any application to have the protection of the United States extended over said islands.

<sup>2</sup>Sen. Exec. Doc. 45, 43-1, Apr. 22, 1874.

Returning to Samoa in 1875, he, Steinberger, dethroned Tupua, made Malietoa sole king, changed the constitution, made himself prime minister of a new government which he established in the financial interest of a German (Hamburg) mercantile firm, and gave the impression that the islands were under the protection of the United States, but the American Government refused to support him. Embarrassed by the renewal of the turbulent spirit among the chiefs, he fell into trouble as a ruler, and being unable to produce any credentials from Washington, was deported with the concurrence of the American consul. A new government, organized under a council of chiefs, continued till May, 1879, when, by the decision of the consular representatives of the United States, Great Britain and Germany, Malietoa was recognized and anointed as king. Steinberger's action had been upon his own responsibility, and without the authority of the United States Government. The purpose of his mission and the character of the power conferred upon him were the subject of inquiry by the House. The President responded on May 1, communicating copies of the correspondence, showing that the United States was not implicated.<sup>7</sup> An instruction to Steinberger, written after the report that he had promised the Samoans the protection of the United States, regretted his action, stating that the United States Government had not held out any hope of such protection, and that the State Department, without a treaty or sanction of Congress, had no right to authorize such a promise.

In both 1877 and 1878 consular representatives of the United States at Apia, "disregarding our traditional policy," raised the United States flag as sign of a protectorate, but the United States Government did not sustain their acts.

In 1877, one of the Samoan parties,<sup>8</sup> seeking repose from

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<sup>7</sup> H. Exec. Doc. 161, 44-1, May 1, 1876. H. Exec. Doc. 44, 44-2, March 2, 1877. The correspondence may be seen in Sen. Exec. Doc. 97, 53-3, vol. vi, Feb. 26, 1895.

<sup>8</sup> At the same time, another party sent its chiefs to Fiji to solicit British protection.

war, and doubtful of their ability to maintain peace and independence, sent Mamea as ambassador to Washington to seek American protection; but Secretary Evarts, though he wished to see a "stable, independent government" that would command the respect of nations and foreigners and end the schemes of disorder, was not willing to accept a protectorate over islands so far distant. In 1878, however, the United States finally concluded a treaty, receiving Pango Pango as a coaling station and agreeing to mediate for the adjustment of difficulties in which Samoa might become involved with a European power.<sup>9</sup> Soon thereafter, Germany also made a treaty by which she secured a naval station in the harbor of Saluafata, and Great Britain negotiated a treaty granting her a naval and coaling station.

In 1879 the foreign powers induced the natives to make a peace agreement by which one party supplied the king and the other the vice-king, both of whom were to preside over a government of lords and commons supposed to be elective. But the elective system existed only in name. Samoans did not trouble themselves about their franchise, and soon the chiefs ignored the whole system and themselves decided who should be representatives. They appeared incapable of carrying on a stable government. Their government had no funds and no system of taxation. They had a parliament without a general parliament house. Discussion was carried on from house to house, each political division having a house. There was oratory, much squabbling, scheming and procrastination, but no voting. If the opposition felt strong enough it would leave and go home to prepare to fight.<sup>10</sup>

The Samoan government was a bone of contention between the foreign consuls. In 1880<sup>11</sup> a scheme of tripartite

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<sup>9</sup> On the reception of the treaty and the political situation at Samoa, see Sen. Exec. Doc. 2, 46-1. Mar. 21, 1879.

<sup>10</sup> W. B. Churchward: *My Consulate in Samoa* [1881-85], London, 1887.

<sup>11</sup> About the same time the United States saw the need of extending the jurisdiction of her Apia consuls to outlying islands, and

local government by the consular representatives of the United States, Great Britain and Germany was proposed, but the United States did not consider the plan desirable. The Samoans themselves were becoming tired of a shuttlecock existence. In 1884, Malietoa and the vice-king begged Queen Victoria to either make Samoa a British colony or allow it to be governed by New Zealand.

German residents, acquiring land and monopolizing trade, had continued to encourage opposition to the king, and in 1884 the German consul precipitated a crisis by securing from the Samoan council an agreement providing for a German-Samoan council of government. The king, refusing to execute the agreement, Steubel, the German consul, in 1885, raised his flag over Apia and took possession in the name of his Government as security for Samoan good behavior toward German interests. The American consul, Greenbaum, to counteract German influence, proceeded to hoist the American flag and proclaim a protectorate. The United States Government disavowed the action of Greenbaum, but spoke in a determined tone regarding the protection of American rights in the Pacific.<sup>22</sup>

In the early part of 1886, the State Department was informed that Germany, having agreed with England upon lines of Pacific division,<sup>23</sup> claimed sovereignty over Samoa, and the hitherto unclaimed Gilbert and Marshall islands in which, as in other outlying, unattached groups, the representatives of many nationalities had sporadically settled.

was ready to aid native and independent government of the Ralick groups of Marshall archipelago in establishing temperance restrictions.

<sup>22</sup> Bayard to Pendleton, Jan. 17, 1888.

<sup>23</sup> In 1885, both Spain and Germany claimed the Caroline Islands, where large American interests were already established. Germany seemed to suspect the intention of the United States to assert a claim to the islands, but Secretary Bayard announced our purpose to respect whatever sovereign jurisdiction might be established or already exist there, without indicating an opinion on the Spanish-German controversy.

The United States had no treaty relations with either the Gilbert or Marshall groups, and offered no objection to their annexation by Germany, but insisted that interests created in favor of peaceful American settlers there should not be disturbed by any assertion of exclusive claims of territorial jurisdiction. In some cases American citizens had undisturbed possession of the Pacific islands, and the United States could have asserted a claim of possession, but she did not desire any exclusive jurisdiction for herself and was not ready to allow any jurisdiction by others if it should expel American citizens from rights which they had from the natives.<sup>14</sup>

Determining to get authentic information regarding the situation in Samoa, Bayard sent (1886) George H. Bates, his law partner, to investigate and to prepare an exhaustive report.<sup>15</sup> Desiring to extend good offices for the establishment of order in Samoa, he suggested a conference of representatives of the three powers which, in June, 1887, met at Washington to negotiate a treaty securing autonomy and neutrality of the islands. He urged that the "autonomy and independence of Samoa should be scrupulously preserved," a principle upon which President Cleveland had insisted in a special message to Congress in the preceding January. He proposed that each treaty power should alternately keep a man-of-war in Samoan waters four months

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<sup>14</sup> The interest of the United States in regard to the destiny of the Pacific islands was increased by the rapid absorption of various groups by the European powers. Great Britain, who had appropriated Australia a century earlier, accepted the Fijis in 1874. France, who had taken the Marquesas, in 1842, and the New Caledonian and Loyalty islands, in 1853, extended her control to the Society group, in 1880; Spain, who had occupied the Philippines and Ladrões since the sixteenth century, took possession of the Carolines, in 1885; Germany assumed control of the Marshall, Solomon and Admiralty groups; Holland and Germany partitioned New Guinea. In 1888, Great Britain took Gilbert, Ellice, Union and Enderbury groups, and several single islands, including Fanning, Washington, Starbuck and Caroline.

<sup>15</sup> Strictly Confidential Report of G. H. Bates to the Secretary of State, Dec. 10, 1886. Washington, 1887, 135 pp.

of each year to aid in maintaining the government to be established and to preserve peace and order. He also proposed that administration of laws be, by an executive council, composed of the king, vice-king and three foreigners, one of whom should be designated by each of the foreign powers, but all of whom should be<sup>18</sup> paid by the Samoan Government. The plan which Germany desired, and the British seemed to favor, committing the practical control of affairs to a German adviser of the king, he feared would give Germany too much influence in the Samoan Government. Failing to agree upon any plan, the conference adjourned in July.

The Germans in Samoa, by mortgages and land sales, were rapidly getting possession of territory which the natives had never intended to sell,<sup>19</sup> and appeared to be preparing to seize the islands. From the government of Malietoa, hampered by a House of Lords and a House of Commons that did as they pleased, and attempting to rule over a people who refused to obey its orders, they expected little protection for white settlers. By defeating Malietoa and setting up another king with a German adviser, they precipitated a civil contest in which the Samoans were divided into two hostile camps of armed warriors,<sup>20</sup> one supported by German arms, and the other by British colonels and citizens of the United States; they declared martial law at Apia and tried to enforce it on Americans, who at once registered a strong protest.<sup>21</sup>

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<sup>18</sup> . . . Blaine, on April 11, 1889, in instructions to our negotiators at the Berlin conference, said that the plan proposed by the United States, in the conference of 1887, was hardly less than a joint protectorate; it went beyond the principle upon which President Harrison desired to see our Samoan relations based, was not in harmony with our established policy, and did not promise efficient action.

<sup>19</sup> In 1886, they claimed 232,000 acres, and the British subjects 357,000 acres.

<sup>20</sup> See an article by Henry C. Ide in *N. Am. Rev.*, Aug., 1897.

<sup>21</sup> Commander Leary of the U. S. warship *Adams* on Sept. 6, 1888, sent a protest to the captain of one of the German vessels. Marines were landed to protect the American consulate.

The United States, though she had not consciously sought to participate in the contest, and though her trade with Samoa was small compared with that of Germany and England, threatened intervention in order to preserve her interests in the Pacific.<sup>20</sup> She promptly sent a naval squadron, which was subsequently destroyed in the hurricane of 1889.<sup>21</sup> Congress, after an examination of reports and much discussion, appropriated \$500,000 for protective measures. On January 17, 1888, in a letter to Pendleton, replying to Bismarck's complaints as to the anti-German attitude of Sewall, the American consul at Apia, Secretary Bayard, reviewing the absorption of Pacific islands by European powers since 1840, and especially since 1884, was determined that only the American Government should preserve Samoan independence and maintain the rights to which the United States had become entitled in any of the few remaining islands which were still under independent and autonomous governments.<sup>22</sup>

In February, 1889, Bayard gladly accepted Bismarck's proposal for a resumption of the joint conference for a tripartite agreement. President Harrison appointed John A. Kasson, William Walter Phelps and George H. Bates as plenipotentiaries to go to Berlin. A convention,<sup>23</sup> concluded the following June, provided for maintaining the neutrality of the islands and stipulated that the three powers should refrain from exercising any separate control over the islands or the government. It contained clauses prohibiting the sale of intoxicating liquors, establishing a system of registering titles, and securing to American citizens equality with others in trade, etc.

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<sup>20</sup> H. Exec. Doc. vol. viii, No. 1, 51-1.

<sup>21</sup> R. L. Stevenson: *In South Seas*, 1888-89. N. Y., 1896.

<sup>22</sup> On American rights in Samoa, see H. Exec. Doc. 238, 50-1, Apr. 2, 1888, 311 pp. For the condition of Samoan affairs, see Sen. Exec. Docs. 31, 68 and 118, 50-2, Dec. 1888 and Jan. 1889. Also, a pamphlet of 77 pages, "Confidential correspondence respecting affairs in Samoa" [December, 1888-March, 1889], printed for the use of the American Commissioners to Berlin in 1889.

<sup>23</sup> S. Misc. Doc. 81, 51-1, Jan. 6, 1890.

The principal features of the government as provided by the treaty were as follows:

(1) A single king, chosen by the chiefs, a salary of \$1800, instead of the two rival kings, who had received \$500 each;

(2) A supreme court with a chief justice nominated by the three foreign powers (or by the King of Sweden in case of disagreement), with a salary of \$6000 guaranteed by the powers. (The clerk and marshal were to be paid by fees.) The chief justice was given jurisdiction of all Samoan questions arising under the treaty, between the treaty powers, and as to the election of king, and could recommend the passage of laws. He had exclusive jurisdiction in suits between natives and foreigners, or between foreigners of different nationalities, and of crimes and offences committed by natives against foreigners.

(3) A local government for the district of Apia (170 electors), consisting of a municipal council of six members and a president. The president, who was also chief executive of the district and adviser to the king, was appointed through the instrumentality of treaty powers, who guaranteed him \$5000 per year out of the Samoan revenues assigned to the municipality. The municipal council appointed a municipal magistrate and subordinate officers, but its orders had no effect till approved by the three foreign consuls or (if they failed to agree) by the chief justice.

(4) A land commission of three persons, one named by each power, for examination of claims and titles, subject to final jurisdiction of the chief justice. (Each commissioner received \$300 per month and expenses.)

(5) A fiscal system, providing for revenue duties on imports and exports, capitation taxes on Samoans and colored plantation laborers, license taxes, etc. All taxes collected at Apia were to belong to the municipality, and those collected elsewhere were to belong to the Samoan Government.\*

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\* In the condition of affairs in the islands this provision resulted in leaving the government without adequate means of sup-



Though the Samoan Government accepted the treaty, and the chiefs elected Malietoa king, the rebellious symptoms of the opposition party gradually increased. The natives remaining inveterately opposed to a centralized or civilized government, refused to pay capitation taxes or to obey warrants of the supreme court, which opened its doors in June, 1891. Mataafa and his turbulent followers continued (1891) to gather strength and to live in open defiance of the king and government, keeping up an armed force, plundering foreigners and plantations, and harboring refugees from justice.<sup>28</sup> In July, 1893, war broke out and the treaty powers actively intervened with naval forces to keep Malietoa on the throne, and soon deported eleven chiefs to another island, where they were kept at the joint expense of the three powers. Meanwhile the chief justice and the president of the municipal council of Apia resigned. In November, 1893, H. C. Ide, an American member of the land commission, was appointed chief justice, but he found the laws silent and insurrection constantly threatening. Though the king succeeded in repelling his opponents in battle, he requested that foreign war-vessels preserve peace and security (1894).

Though both Bayard and Bates had contemplated the necessity of assistance from the powers to maintain the government established by the treaty,<sup>29</sup> and Gresham, as late as June, 1893, had informed Pauncefote that the United States Government would "join in an active demonstration against Mataafa," President Cleveland sent no

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port and became a subject of concern and discussion among the three powers, who were compelled to continue their pecuniary support of the government.

<sup>28</sup> In January, 1893, many in the United States Senate thought we had made a mistake in refusing to accept annexation or extend a protectorate when the opportunity was offered.

<sup>29</sup> On February 20, 1893, Blaine, in a letter to Pauncefote, also stated that in the execution of the spirit of the treaty of Berlin the treaty powers should send war vessels to sustain the Samoan authorities and enforce the warrants of the supreme court by proper and judicious means.

war vessels, and considering the islands commercially worthless and the inhabitants intractable, in his messages of 1893, 1894 and 1895, recommended withdrawal from the treaty." Though the treaty of 1889 had been a deliberate act of national policy in our international relations, both Cleveland and Secretary Gresham urged that it was a mistake, expensive, annoying and involving us in entangling alliances."

Gresham referred to the Samoan government as in substance and form a tripartite foreign government imposed upon the natives, and supported and administered jointly by the three treaty powers. On May 9, 1894, a report to President Cleveland said: "It is in our relations with Samoa that we have made the first departure from our traditional and well-established policy of avoiding entangling alliances with foreign powers in relation to objects remote from this hemisphere. Like all other human transactions, the wisdom of that departure must be tested by its fruits. . . . Every nation, and especially every strong nation, must sometimes be conscious of an impulse to rush into difficulties that do not concern it, except in a highly imaginary way. To restrain the indulgence of such a propensity is not only the part of wisdom, but a duty we owe to the world as an example of the strength, the moderation and the beneficence of popular government. . . . The whole trade of the islands is of small value, and of this only a small part is with the United States. We have never found it wise to interfere in the affairs of a foreign country in order to trade with it."

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" See an article by H. C. Ides in the *N. Am. Rev.* for Aug., 1897.

" The *Nation* said the result of the treaty arranged was continual unrest, disturbance and foreign interference and opposed the modern mania for foreign dependencies at great distances from our shores, stating that if Samoa belonged to any system it belonged to the Australian system, and that the New Zealanders, had more reason than the United States to complain of German meddling. [*Nation*, May 17, 1894.]

" For Gresham's review of American relations as to Samoa, see "Foreign Relations," 1894, Appendix i, pp. 504-13. Also, Senate Exec. Doc. 93, 53-2, vol. iv.

The long-range government of refractory, indocile natives, with all its perplexities, under the international joint protectorate continued to be unsatisfactory and expensive, but no better plan acceptable to all could be suggested." The death of King Malietoa Lampepa, in August, 1898, finally produced a crisis which resulted in a new arrangement. The election of a successor developed a contest as to the validity of the result, and rival claimants took the field. Chief Justice Chambers (from Alabama) with his great power, acting by the terms of the general act, rendered his judgment in favor of Malietoa Tanu, and Mataafa, encouraged by the German consul, and with more followers than the king had, took up arms. Marines from American and British warships intervened to restore order."

Steps were taken to improve relations between the United States and Germany, and to avoid any occasion for further friction in Samoa," a joint commission of representatives of the United States, Great Britain and Germany were sent to investigate affairs at Samoa, and to propose a remedy. It soon abolished the kingship and established a provisional government. The partition of the islands, as Blaine had planned in 1889, or annexation of the whole group by a single power, appeared to offer best promise of a satisfactory permanent settlement.

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" Foreign Relations, 1896, pp. 531-54; also, 1895, pp. 1126-59.

" *The Nation*, Jan. 26, 1899.

" William Blacklock, the United States vice-consul-general, who advocated annexation as the only permanent settlement, in a statement of his views for the commission in June, 1899, said:

" The mode of dealing with the natives from the beginning by the powers interested in Samoa has been calculated to make the Samoan a most important individual in his own estimation. Stacks of proclamations have been posted and endless orders from warships been issued, but none has ever been thoroughly enforced, and the consequence is that now the natives ignore proclamations and laugh at threats of men-of-war. They imagine themselves unconquerable, even by the three powers combined, and every time there is an outbreak they go a little further than the time before."

The United States was determined not to abandon her interests to Germany and England. The latter, however, agreed to retire, in view of compensation by Germany in other directions, and in a treaty providing for a discontinuance by the joint protectorate both powers renounced (November, 1894), in favor of the United States, all their rights and claims to that portion of the group east of 171 west longitude, including Tutuila and other smaller islands. By the same convention the United States agreed to renounce all claims to the islands of the group lying west of 171, thus giving the Germans the preponderating force which they had exercised in that region before the treaty of Berlin was made. She received a guarantee, however, for the same privileges and conditions as those possessed by Germany in respect to commerce and commercial vessels in all the islands of Samoa. Malietoa, after an unsuccessful protest, expressed his views in a letter to the *London Times*, in which he took occasion to assert that the civilization introduced by the great powers in their annexations in the islands of the South Seas is inferior to the primitive state of those islands.\*

The American flag now floats over the naval station at Pango Pango, and the island of Tutuila is under the control of the navy, but there has been no interference with the political self-government of the natives, who have appeared delighted to pass under the sovereignty and protection of the United States.

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\* *London Times*, January 12, 1900.

## CHAPTER X.

### OCCUPATION OF THE PHILIPPINES.

The Philippines, which have recently and unexpectedly enlarged the sphere of the United States in the Far East, were visited by Americans at a very early date in our national history. After the close of the war of 1812, Secretary Monroe took steps to obtain information regarding conditions there and to secure a report on the prospects for trade. In March, 1817, Andrew Stuart, who had resided in Manila since 1812, received from President Madison a commission as United States consul at that place. For several years he was not officially recognized by the Spanish authorities, but he was allowed to remain and was not obstructed in the performance of the duties of a consul.<sup>1</sup> In September, 1818, he reported that the Spanish authorities had found several Americans among the crew of the *Argentina*, a Buenos Ayres privateer, which had been obstructing the provincial commerce for several months. Writing to Secretary Adams, in June, 1819, he stated that unless interrupted by the "proverbially suspicious government," he proposed to place the United States in possession of Royal nautical directions for the guidance of galleons and for the harbors to which they resorted, together with charts and drawings showing "tracks laid down in unpublished Spanish plans," which he suggested might "assume an aspect of great national and political importance and utility . . . should the amicable relations between the two governments ever be interrupted or ruptured."

About the same time, Lieutenant John White, of the

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<sup>1</sup> Consular Letters, Manila, vol. i, 1817-40. [MS.]

United States navy, after arriving at Cavite and Manila, and taking breakfast with Stuart, wrote: "The spirit of independence which has recently diffused its influence through Spanish colonies on the American continent has also darted its rays across the Pacific . . . and the time is perhaps not very remote when it shall burst forth and shed its joyous light upon the remotest and most inconsiderable islet of this archipelago." . . . "Perhaps no part of the world offers a more eligible site for an independent republic than these islands."<sup>1</sup>

In November, 1820, Consul Stuart, writing of recent native maraudings, murders and riots, and feeling that the Government was too slow in declaring martial law, suggesting that the recently published new constitution was too liberal to the natives and expecting a general revolution to result, said the Filipinos were treacherous, ungrateful and "insensible of any favor done them," and "ought to be governed rather strict(ly) to keep them obedient to the laws, make them industrious, to work in every mode against their natural and old inclinations."<sup>2</sup> At that time there was little demand for American goods, but by 1834, Consul H. W. Edwards, noticing the increase of imports of American manufacturing goods, said: "These islands will eventually be the outlet of our manufactures to a great extent."

The United States, though she annexed the Philippines as a result of long-evolving circumstances,<sup>3</sup> acquired them as the result of no long-contemplated plans. In 1898, at the beginning of the war of intervention in Cuba, she had "no design of aggrandizement and no ambition of conquest." Needing a naval station and a port where our war vessels could find protection and desiring to reduce the strength of the enemy, after the declaration of war, the American Government ordered Dewey to destroy the Spanish fleet at

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<sup>1</sup> John White: *A Voyage to the China Sea*. Boston, 1823.

<sup>2</sup> Consular Letters, Manila, vol. i, 1817-40.

<sup>3</sup> R. H. Bancroft: *The New Pacific*.

Manila. By a brave dash into the harbor, we soon held the key to the Philippines and cut off communication with Madrid. To hasten peace we sent an army of occupation across the Pacific. At the close of the war, though we had taken up arms "without any original thought of complete or even partial acquisition," the presence and success of our arms in Manila brought our republican empire new opportunities which she could not wisely reject, and new duties and responsibilities which she could not courageously and honorably avoid. Having obtained occupation of a rich prize, whose value was well known by European powers that would have seized it at first opportunity without hesitation, and seeing the value of a permanent establishment at the gates of the East, the McKinley administration in the peace negotiations of 1898, accepting the logic of our history, resolved to relieve Spain of insular dependencies she had only held with a weak hand and which, under American control, would have the opportunity to enjoy greater freedom, and would give the American nation a greater place in the affairs of the world.

On October 28, 1898, the American Peace Commissioners at Paris were instructed as follows: "Territorial expansion should be our least concern; that we shall not shirk the moral obligations of our victory is of the greatest. It is indisputed that Spain's authority is permanently destroyed in every part of the Philippines. To leave any part in her feeble control now would increase our difficulties and be opposed to the interests of humanity. Nor can we permit Spain to transfer any of the islands to another power. Nor can we invite another power or powers to join the United States in sovereignty over them. We must either hold them or turn them back to Spain.

"Consequently, grave as are the responsibilities and unforeseen as are the difficulties which are before us, the President can see but one plain path of duty—the acceptance of the archipelago. Greater difficulties and more serious complications, administrative and international, would follow

any other course. The President has given to the view of the commissioners the fullest consideration, and in reaching the conclusion above announced in the light of information communicated to the commission and to the President since your departure, he has been influenced by the single consideration of duty and humanity. The President is not unmindful of the distressed financial condition of Spain, and whatever consideration the United States may show must come from its sense of generosity and benevolence, rather than from any real or technical obligation."

On November 13, the following additional instructions were sent:

"From the standpoint of indemnity both the archipelagoes (Porto Rico and the Philippines) are insufficient to pay our war expenses, but aside from this, do we not owe an obligation to the people of the Philippines which will not permit us to return them to the sovereignty of Spain? Could we justify ourselves in such a course or could we permit their barter to some other power? Willing or not, we have the responsibility of duty which we cannot escape. The President cannot believe any division of the archipelago can bring us anything but embarrassment in the future. The trade and commercial side, as well as the indemnity for the cost of the war, are questions we might yield. They might be waived or compromised, but the questions of duty and humanity appeal to the President so strongly that he can find no appropriate answer but the one he has here marked out."

The treaty of peace<sup>a</sup> of December 10 provided that Spain, beside withdrawing from the West Indies, should cede to the United States the archipelago known as the Philippine Islands; that the United States should pay to Spain the sum of \$20,000,000, and that the civil rights and political status of the native inhabitants should be determined by Congress.

The treaty was ratified by the Senate on February 6, 1899,

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<sup>a</sup> Sen. Doc. 62, part i, 55-3, Jan. 4, 1899, 677 pp.



and by the Government of Spain on the 19th of March following. The ratifications were exchanged on the 11th of April and the treaty publicly proclaimed. On the 2d of March Congress voted the sum contemplated by the treaty, and the amount was paid over to the Spanish Government on the 1st of May. The United States, though acting on the principle that "there must be no joint occupation with the insurgents," who were in arms against the Spanish Government in the Philippines, had from the time of American occupation assured the people that the United States Government desired to advance their interests and welfare. On the 21st of December, after the treaty was signed, the commander of the forces of occupation was instructed "to announce and proclaim in the most public manner that we come not as invaders and conquerors, but as friends to protect the natives in their homes, in their employments and in their personal and religious rights.

With a desire to establish peace and order, and as much self-government as was "compatible with the welfare of the people," in January, 1899, President McKinley sent to Manila, Commissioners Schurman, Denby and Worcester, who, in association with Admiral Dewey and Major-General Otis, were instructed "to facilitate the most humane and effective extension of authority throughout the islands and to secure with the least possible delay the benefits of a wise and generous protection of life and property to the inhabitants." Before they reached Manila, Aguinaldo, claiming that a United States officer had promised that the islands should be independent, directed the Filipinos in an attack on the American lines and precipitated a condition full of embarrassment to the United States and grievous in its consequences to the islanders.\*

Aside from an ignominious retreat, which would have exhibited a "nerveless pusillanimity," and abandoned the islands to strife and anarchy, making them an apple of dis-

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\* Sen. Doc. 208, 56-1, Mar. 5, 1900, 173 pp. +

cord among rival powers, the only course remaining for the United States was to subdue the unprovoked and wasteful insurrection, preparatory to the establishment of order and the reconstruction of the government. The commissioners, in their report, said: "Our obligations to other nations and to the friendly Filipinos, and to ourselves and our flag, demanded that force should be met by force." For the restoration and maintenance of order in the Philippines, including the Sulu peninsula, the recent haunt of piracy, we were responsible to the world. To renounce the authority which we had accepted tacitly and by treaty, and give the islands an independence for which they were not prepared, would have been unjust to the loyal majority who sought American protection. To have declared the islands independent under an American protectorate, would have made us responsible for the acts of the insurgent leaders without the power to control them, and would have involved us in endless tasks of adjusting quarrels between factions in the islands and between the islands and foreign powers.'

Judge W. H. Taft, professedly an anti-expansionist, in a speech at Cincinnati on March 5, 1900, said:

"My conviction is that the calm investigation of the future historian into all the conditions existing at the time of taking each step toward the present situation in the Philippines will lead him to conclude that President McKinley and his Administration selected in each crisis the only alternative which a due regard to our national and international obligations would permit."

American control of the Philippines will mean the new dawn of freedom, progress and civilization to the islanders. During the declining insurrection the islands have necessarily been under military authority. President McKinley's policy has been "to inaugurate governments essentially popular in their form as fast as territory is held and controlled by our troops," beginning the work of reconstruction

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' Sen. Doc. 138, 56-1, vol. i (Jan. 31, 1900), 264 pp.

by first forming municipal and provincial governments and leaving the establishment of a central government at Manila for the last step. He has sent a commission as a substitute for military government, and as a preliminary step to the establishment of a territorial form of government when it may be possible to give the natives the right of suffrage.

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The changing conditions in Asia, the mother of races, are observed with interest by the entire world. From the East to the Far East, fact is overcoming fancy, and new life takes the place of the fading, vanishing pictures of the past. Modern, relentless progressiveness is gaining a foothold in the land of Abraham, Isaac and Jacob, in the land of Moab, in the Garden of Eden, and in the homes of Confucius and Buddha. The walls of Jerusalem echo the pant and screech of the locomotive, which now connects the Holy City with Jaffa on the Mediterranean; and probably it will not be long before a trolley line will connect the site of Solomon's capital with a line of steamboats on the Dead sea, which has so long remained a forsaken solitude in the midst of a desert. At the other end of Asia, Japan, since opening her arms to the progressive West, is thriving with manufacturing and other developing industries, and has recently stood forth as the little giant of the Orient. In 1894, disputing with China the protectorate of Corea, she sent her well-drilled and well-equipped troops to sustain her claims, soon occupied all Corea, Port Arthur, part of Manchuria and Wei-hai-Wei, and by the treaty of Shimonosaki (in April, 1895), induced China to cede Formosa, the Pescadores, and the peninsula of Liao-tung, to open new ports, to permit the erection of Japanese manufacturing establishments in the empire, and to agree to pay a war indemnity of seven hundred and fifty millions. She surprised the world by the rapidity of her success, but she was

soon persuaded, by the concerted "friendly" protest of Russia, France and Germany, to modify the treaty and relinquish Liao-tung and Wei-hai-Wei.

China, awakening from the lethargy of ages, observes that the face of the world has changed, and is preparing for regeneration from a long rule of ultra conservatism.<sup>1</sup> She will soon be threaded with railways, and brought into closer touch with Western civilization. She has granted to Great Britain the privilege of building railroads in the valley of the Yang-tse, and has made concessions to other nations for roads in other parts of the empire. In 1896, she granted to the Eastern Chinese Railroad Company the right to build a line through Chinese Manchuria (to connect as a branch of the Trans-Siberian Railway), to develop coal and other mines in the adjoining territory, and to engage in other industrial and commercial enterprises. In 1898, she granted to Russia the privilege of building a railway from Vladivostock to Port Arthur. More recently she agreed to permit the construction of a line from Mukden in Manchuria to Peking, and three lines from Peking to the provinces of Shansi, Ho-nan and Hupeh. Still other lines are in contemplation to connect southern China with Peking, with French Indo-China, and with Burma of British India.

The "Eastern Question" has spread from Constantinople and the eastern shores of the Mediterranean to Persia, Afghanistan, and the Far East. It has expanded or resolved itself into many problems, of which the Chinese has recently become the most prominent. Of the nominally independent countries of Asia, *i. e.*, Turkey, Arabia, Oman, Persia, Afghanistan, Nepal, Bhutan, Siam, China, Corea and Japan—only Japan is thoroughly independent in fact. European powers have zones of influence in all of the others. Turkey, in need of a better government, has been the object of the

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<sup>1</sup> A. R. Calquhoun: *China in Transformation*. Curzon: *Problems of the Far East*. Lord Charles Beresford: *The Break-up of China*.

deliberations of an international congress. Central Arabia is inhabited by tribes who owe allegiance to no single ruler. Oman is practically an English protectorate. Persia is dominated by Russia in the north and by England in the south. Afghanistan, under the uncertain rule of an Afghan chief, receives a subsidy from British India, and permits a Russian flotilla on her branches of the Oxus. Some say that occupation or protection by some stronger power is apparently the only relief for the chaotic conditions which exist from the Bosphorus to the Hindu Kush. China, though not in the same political condition as Turkey and Persia, sometimes appears to be preparing herself for a coroner's inquest or vivisection. Her internal condition, together with her relation to opposing powers with conflicting interests, presents a serious case to the political doctors, who find it difficult to agree upon a remedy to effect a permanent cure.

The Anglo-Saxon and the Slav have met on the Plains of Pamir, the roof of the world, at the western gate of China. Only a strip of Afghan territory, twelve miles wide, lies between them, and it is under British influence. Afghanistan is only a temporary "buffer" between them, though it may be of little value to either except as a basis for military operations. With half-completed military roads, they keep their armies like bridled steeds, ready to prance toward each other in war-harness. The Anglo-Saxon nation, incessantly toiling, cultivating swamps and clearing jungles, driving back famine and pestilence, and opening the tropics to the world, has extended her dominion upward from the south of India, secured a supreme influence in Southern Asia from the Red Sea coast and the Persian Gulf on the west to Siam and toward Singapore on the east. She has peacefully expanded over Beluchistan, and extended her control northward from Calcutta to the Himalayas and eastward to Siam. Still further east she possesses Borneo and South Sea groups of islands. In China, she is already established at Hong Kong, has a shadowy sphere of predominating influence in

the Yang-tse valley, and is planning to secure a concession for a railway from Burma to Yunnan.

The Slav, by a long record of toil and privation and self-directed effort, has colonized central Asia and continued eastward with half-accidental, half-unconscious progress across the continent. Vast Russia, virile, apparently invincible, and increasingly predominant, spanning Europe and Asia, embracing one-half the combined area of the two continents (and nearly two and one-half times as large as the United States), is steadily expanding to the south and east along a wavering frontier of 10,000 miles. She is strengthening her hand in the Bosphorus, Syria and Palestine and in Persia, which offers a practicable trade outlet to the Indian ocean, and an advantage in case of conflict with England. If England and France would permit, she would absorb Turkey, whose capital she has threatened for 800 years. She has become predominant in the north of Persia, whose territory she has been acquiring for 100 years. She has consolidated her position in Turkestan, elbowed China out of Pamir on the west. The more England has hindered her in the south, the better has she established herself in the east, especially since the Crimean war. In her search for a "scientific boundary," she has always advocated "rectification of the frontier" as a remedy for grievances, and is now in possession of the greater part of the land which China has been losing since 1858. Indenting Chinese territory from Pamir to Manchuria, she has been making rapid strides to occupy the position once held by Genghiz Khan.<sup>2</sup>

Russia is now at the beginning of a new era in her history. Since 1893, she has been consolidating the work of the early venturesome explorers across the wilds of Siberia by the construction of a trans-Siberian railway with numerous stations and branches. By means of this road she is securing a more rapid colonization of Siberia—whose fertile,

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<sup>2</sup> Alexia Krausse: *Russia in Asia* (1898-1899).

productive lands no longer remain locked in silence and solitude—and is expecting to work a revolution in the commerce and travel of the world. She is bringing the Far East to the doors of Europe, and preparing to become an oceanic power. After a struggle of 200 years to reach the open sea, and a port free from ice at all seasons of the year, she now floats her flag over Port Arthur, southeast of Peking, and is attaining the freedom of the seas.

Russia now threatens to secure an advantage in the trade of China by a process of gradual absorption. She has rapidly become a manufacturing nation, and, like Great Britain and the United States and other powers, is seeking new markets. She claims a sphere of influence north and east of Peking, and has an eye toward the great central valley where British influence is still predominant. Knowing that it will be difficult for her, under equal terms, to compete with British, American, German and French trade, she may undertake to secure exclusive privileges for her traders and for the exercise of her influence, and perhaps obtain complete control of portions of China under an exclusive colonial system. In case she should become involved in a conflict with Great Britain, who has so long been her competitor and antagonist in the direction of Asia, she would probably have the assistance of France, who, driven from India by the British, and profiting by fortunate circumstances, has established a new French empire in the Indo-Chinese peninsula (including Cambodia, Anam, Cochin China and Tonkin), and has a sphere of commercial activity in the south of China. Russia and France, should they form an alliance for the partition of China, would probably be resisted by the common action of Great Britain and Japan, and also by Germany in case such action should seem to be subordinate to her European and general interests.

The United States, though beginning to play a great part in the Pacific, and having trade interests in the Orient which may increase rapidly, desires to remain free to act independently, or in cooperation, as circumstances may indicate

to be the wisest policy. She feels, however, that her position among the nations, with a large Pacific coast and a constantly expanding direct trade with the Far East, gives her "an equitable claim to consideration and friendly treatment." She finds an open door along the shores of southern Asia, where Great Britain has control, and perhaps would participate in active cooperation to prevent any power from securing exclusive commercial advantages in China. She "has not been an indifferent spectator of the extraordinary events transpiring in China," by which portions of the maritime provinces are passing under the control of various European powers; but the necessity of her becoming an "actor in the scene" has been obviated by the prospect that the new occupants will not prejudice American commerce by exclusive treatment.\*

The United States, through her prestige as a territorially disinterested power, and her ability to speak in the language of unselfish, powerful diplomacy, has an opportunity to become an arbiter in a peaceful and definite settlement of the problems of the Far East, securing fair dealing and equal opportunity, and preserving the honor and interests of all. Facing Asia as well as Europe, she is well situated for the protection of American interests and the support of the independence and integrity of China with an open door to commerce—a policy which the American Government has advocated for over thirty years.\* With her western coast ports, the Hawaiian and Philippine islands, and steamers on the Pacific, if she prepare to urge an open-door, non-partition policy in China, she can secure her share of the developing trade of the Orient.

The importance of securing ports or establishments in the vicinity of the coasts of Asia, for the benefit of American commerce, was suggested in the early part of the century. It was urged in 1832 by President Jackson, who sent Ed-

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\* President McKinley's message, Dec. 5, 1898.

\* Instr. Germany, Fish to Bancroft, Aug. 31, 1869.



mund Roberts to negotiate treaties with Borneo, Siam, Cochin China and Japan. The increase of American interest in the Orient, by the conditions following American expansion to California, soon resulted in a determination to secure better facilities for intercourse with the Pacific and the Eastern countries. "The future history of the world must be achieved in the East," said W. H. Trescott, who urged (1849) the policy of an Anglo-American alliance as a means to prevent Russian designs in China and to "control the history of the world." Senator Seward, advocating surveys in the seas of the Far East, in 1852, said: "Who does not see, then, that every year hereafter, European commerce, European politics, European thought, and European activity, although actually gaining force, and European connections, although actually becoming more intimate, will, nevertheless, relatively sink in importance; while the Pacific ocean, its shores, its islands and the vast region beyond will become the chief theatre of events in the world's great Hereafter. . . . Who does not see that this movement must . . . develop the American opinion and influence, which shall remould constitutional laws and customs in the land which is first greeted by the rising sun . . . I cannot reject the hope that peace is now to have her sway. . . . Commerce is the great agent of this movement. Whatever nation shall put that commerce into full employment, and shall conduct it steadily with adequate expansion, shall become necessarily the greatest of existing States." Commodore Perry, on his route to secure ports in Japan, proposed the occupation of the Loo Choo Islands as a preliminary measure, and also contemplated the extension of American jurisdiction over the Bonin group. Later he suggested the occupation and colonization of Formosa. In 1856 and 1857, Mr. Parker, the American commissioner in China, suggested to Secretary Marcy the policy of taking Formosa from China as an indemnity [supra, p. 98]. Marcy had just been making an effort to acquire Hawaii, as an outlying territorial possession with no promise of

statehood, but he was opposed to the seizure of Formosa. The peaceful negotiation of treaties with Japan and China, after 1857, reduced the immediate importance of securing ports on the smaller islands as proposed by Perry. The annexation of Hawaii, however, continued to be regarded as a measure concomitant with the increase of American influence in the Pacific. In reply to those who opposed its annexation because of its distant insular position, Senator Dolph, in 1893, said: "We must abandon the doctrine that our national boundaries and jurisdiction should be confined to the shores of the continent. We cannot afford, like a snail, to draw our heads within our shells." At the beginning of 1898, Senator Lodge said that since we had made the citadel secure, we must not now neglect the outposts.

By the retention of the Philippines, the United States has entered upon a new era. Refusing to choose a policy of isolation, she has become a world power, and a leading factor in international politics. She no longer stands aloof from the Pacific, "the historic sea of the future,"<sup>\*</sup> as she did in her weak beginnings when the vast unexplored territories on our west belonged to foreign powers.

Her evolution to the "Great Pacific Power" appears to be but the logic of history. Richard Olney, ex-Secretary of State, recently referring to our future relations with the European powers struggling for commercial and political supremacy in the East, said the abandonment of our "international isolation" policy, which was only suited to the period of our infancy, was inevitable, and would result in

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\* "The nations have their toes toward the Pacific." They have left very few of its islands unappropriated. Since the race for island-grabbing in the South Seas, in 1884-86, there is no longer an opportunity to occupy fabled regions unexplored in the Polynesian world. The nations have been taking time by the forelock and preparing to secure positions which are likely to prove advantageous in connection with the swiftly changing conditions in the Orient.

aiding our commercial interests and the widening of our mental and moral vision as a nation.

The constitutional question involved in the acquisition and government of the Philippines has recently been the subject of much discussion. It will soon be a subject of decision by the Supreme Court. The American Government is acting upon the belief that the islands can be governed by Congress as territorial possessions of the United States, and in beginning the inauguration of a responsible government has very liberal views.\* It proposes a political system devised for the interest of all concerned and administered by the inhabitants as far as they show a capacity for self-government; but, if necessary to preserve order, the islands may be ruled by the American Government with a hand as strong as that of Jefferson, who applied his "despotic" non-representative system to Louisiana against the protests of the inhabitants, who requested him to send the Declaration of Independence and the Constitution to the shores of the Mississippi.

America faces responsibility and opportunity with the same spirit of confidence which animated the Fathers. With her face set toward the morning, she seeks duty with the courage of the optimist and the ameliorator. She does not let her aspirations sink before the predictions of the prophets

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\* In his message of Dec., 1899, President McKinley said:

"The hour of victory will be the hour of clemency and reconstruction.

"No effort will be spared to build up the waste places desolated by the war and by long years of misgovernment. We shall not wait for the end of the strife to begin the beneficent work. We shall continue, as we have begun, to open the schools and the churches, to set the courts in operation, to foster industry and trade and agriculture, and in every way in our power to make these people, whom Providence has brought within our jurisdiction, feel that it is their liberty and not our power, their welfare and not our gain, we are seeking to enhance.

"Our flag has never waved over any community but in blessing. I feel the Filipinos will soon recognize the fact that it has not lost its gift of benediction in its world-wide journey to their shores."

of disaster. She has not become discouraged by the gloomy views of "trembling ones shrieking at the self-conjured ghost of imperialism, as if empire could grow on freedom's soil." She sees no reason to condemn the present or to despair of the future. She observes that the republic has survived the predictions of disaster made by those who opposed the policy of Jefferson, Madison, Monroe and their successors. She asserts that the Ship of State under sunny skies still has her anchors, and is abundantly able to meet new conditions in world movements.

The future belongs to the future. Its conditions will influence the shaping of policy for the solution of problems as they arise. But America has no element of exploitation or imperialism lurking in her purposes. With high and just motives, she reaches the hand of helpfulness across the seas which she wishes to transform into paths for ships. She will continue to embark, venture, explore and investigate, as she has in the past. She will carefully survey and feel her way, and construct charts for those who follow. With the strenuous spirit of the pioneer, she advances beyond the frontier. When she reaches streams unspanned, she will build bridges; and when she comes to bridges, she will cross them.

The descendants and beneficiaries of those who, three centuries ago, animated with the desire to found an imperial democracy, faced the cold, inhospitable coasts of a wild, uncivilized continent and began our traditional policy of expansion, may confidently face the problems of foreign policy and territorial government which now confront them.

## APPENDIX A.

### INSTRUCTIONS TO HUMPHREY MARSHALL AS COMMISSIONER TO CHINA IN 1852-53.<sup>1</sup>

DEPARTMENT OF STATE,  
WASHINGTON, 11TH AUGUST, 1852.

NO. 1. HUMPHREY MARSHALL, Esq.,  
ETC., ETC.

*Sir*.—The Department [has] already communicated to you your Commission as Commissioner of the United States of America to China.

Your compensation as fixed by law is at the rate of Six Thousand Dollars (\$6000) per annum. . . .

To become properly conversant with the business of the Legation, you will have recourse to the correspondence between this Department and your predecessors in the Mission, recorded in its archives. Special instructions on important subjects between the two Governments will be sent to you from time to time as occasion may require.

During your residence in China, you may sometimes be applied to to interpose in behalf of American citizens for the purpose of obtaining satisfaction of claims which they may have upon the Chinese Government, or the redress of grievances which they may experience in the course of their dealings and transactions. In cases of this nature, where the intervention of this Government shall be proper according to the public law, you will afford such official aid as may appear to you appropriate to the occasion whether you have special instructions from this Department or not. . . .

I am Sir, respectfully,

Your obedient servant,

DAN<sup>L</sup> WEBSTER.

[1 China Instr., pp. 76-79.] . . .

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<sup>1</sup> Before the appointment of Marshall, the position had been offered to three persons within one year. The nomination of A. R. Nelson was confirmed by the Senate in March, 1851. Joseph Blunt accepted the place on October 20, 1851. On February 24, 1852, the President offered the place to Alfred Conkling, of New York, who declined. Marshall's commission was sent to him by the Department of State on August 6, 1852. See p. 90, *supra*.

DEPARTMENT OF STATE,  
WASHINGTON, 20TH SEPT., 1852.

No. 2. HUMPHREY MARSHALL, Esq.,  
ETC., ETC.

*Sir*.—You are aware that some of our citizens now or formerly resident in China, have, for a long time past had claims against the Chinese Government. The cases are that of the Rev. Mr. Roberts for losses sustained by a mob at Canton, and that of Messrs. Louis Manigault and Edward Cunningham, for assault and robbery in the neighborhood of the same city. The Department is not in possession of such proof as would warrant it in expressing an opinion in regard to these claims. As you will be on the spot, however, where all the evidence that can be adduced in support of them will be accessible to you, you will be enabled to determine whether they are of such a character as would warrant the official interposition of this Government. It is possible that the Chinese Government might require proof of your authority to negotiate upon the subject. To provide for this contingency, it has been judged expedient to give you the accompanying full power. This will enable you to adjust not only the cause above mentioned, but any others which may occur during your mission.

I am Sir, respectfully,

Your obedient servant,

C. M. CONRAD,  
*Acting Secretary.*

[1 China Instr., pp. 79–80.]

DEPARTMENT OF STATE,  
WASHINGTON, 7TH JUNE, 1853.

No. 8. HUMPHREY MARSHALL, Esq.,  
ETC., ETC.

*Sir*.—Your despatches to No. 10, inclusive, have been duly received at this Department.

The Government of the United States has recently received additional information of the successful progress of the Revolutionary movements in China. It is also apprised of the intention of the Government of Great Britain to avail itself of the present condition of things in that country to obtain "increased facilities of intercourse" with it, not exclusively for its own subjects but for all nations and it has suggested to this Government to send such instructions to our Commissioner there as will "empower him to take such course in conjunction with Her Majesty's Plenipotentiary as will be calculated to turn to the best account the opportunity offered by the present crisis to open the Chinese Empire generally to the commercial enterprise of all of the civilized nations of the world."

The end proposed commends itself to the approval of the President and he directs you to do what you can within your proper sphere of action, towards its accomplishment. Our treaty stipulations with China must be respected and our settled policy of non-interference in the contests which arise between the people and their rulers must be observed. Without a departure from these rules of conduct you may be able to do much in such a crisis as does or may exist in China to cause an abandonment of the unwise restrictions imposed by China upon foreign intercourse. Without knowing what course the British authorities may deem it expedient to take in furtherance of the object in view, the President does not enjoin upon you cooperation, but only cordial relations and free conference with them.

As it is impossible to anticipate here what will be the condition of things there, no specific instructions in regard to your official conduct can be given. Your own judgment must be your guide as to the best means to accomplish the desired object.

In the agitated state of the country the property of our citizens therein and their rights will probably be in unusual danger. You will be vigilant and active in affording them all the protection within your power. The naval force of the United States in that vicinity will be devoted to this important object.

The Department requests you to keep it fully advised of the progress of events in China, of the effects of the Revolutionary proceedings there upon our interests and of the prospects presented for a more free and extended commerce with that country.

I am Sir, respectfully,  
Your obedient servant,

W. L. MARCY.

[1 China Instr., pp. 84-86.]





## APPENDIX B.

### GOVERNMENT OF HAWAII AS A TERRITORY OF THE UNITED STATES.<sup>1</sup>

Congress in providing for the government of Hawaii as an American Territory has been very liberal. In the original bill as presented by the commissioners who visited the island, strong argument was presented in favor of a property qualification for voters. It was feared that natives, with suffrage unrestricted, would secure the control of the legislature, and might even be able to override the veto of the governor. It was said that if the natives should combine, it was reasonable to suppose that no white person could be elected to a legislative seat.

After the overthrow of the monarchy a property qualification had been imposed upon the electors of senators. A conservative class was thus provided, and held the other house in check. The system was recommended for continuation.

The Congressional committee to which the Hawaiian bill was referred did not retain the property-qualification feature. It acted upon the principle that "the right of free expression at the polls is in the nature of a safety valve," and that citizens of Hawaii should have the right to participate in their government, irrespective of tax-paying ability. Hawaii had already shown herself capable of maintaining a stable government. She had a system of laws based upon American laws. She was familiar with Anglo-Saxon institutions and language. She had voluntarily placed herself under the sovereignty of the United States. Americans, although in a small minority, practically dominated the governmental, financial and commercial affairs of the islands.<sup>2</sup>

Congress had never yet required a property qualification in any of the territories, (though in some cases there had been reason to suspect the danger of riotous and ignorant legislation), and it was not considered necessary to make a local exception in the case of Hawaii.

<sup>1</sup> See p. 184 *supra*

<sup>2</sup> The Hawaiian Islands are now occupied by the following races and nationalities:

Hawaiians and mixed blood.....	80,000
Japanese.....	25,000
Chinese.....	21,000
Portuguese.....	15,000
Americans.....	4,000
British.....	2,250
Germans and other Europeans.....	2,000
Polynesians and miscellaneous.....	1,250
Total.....	160,500

About 700 Chinese have been naturalized into the Hawaiian republic, and many Chinese and Japanese are there under government permits and labor contracts, under which they are bound to work for a term of years and to return to their own countries at the end of their term of service.

The Chinese and Japanese possess no political power.

The Portuguese are largely immigrants or descendants from immigrants from the islands and colonies of Portugal in the Atlantic and are not closely allied in sentiment to their native country.

The public school system makes the study of the English language compulsory. There are 132 public and 60 private schools, and education is compulsory and free as to all public schools. American text-books are used in the schools. The language of business in English and the decisions of American courts prevail as precedents.

**GOVERNMENT  
OF THE  
TERRITORY OF HAWAII**

(April 30, 1900)

**CONSISTS OF TWO HOUSES.  
(Section 12)**

Provisions common to both houses: General elections, first Tuesday after first Monday in November, 1900, and biennially thereafter (14). Each house judge of election, returns, and qualifications of own members (15). Can not hold other office (16-17). Oath of office (19). Each determines its own rules. One-fifth can demand ayes and noes. Majority constitutes quorum for business, except on final passage; then majority of all members required (22). Less than quorum may adjourn and compel attendance (23). Each house punishes members (25). Members exempt from liability elsewhere for words (28). Arrest (29). Salary, \$400 each session and 10 cents a mile each way; \$200 extra session.

First session, third Wednesday, February, 1901, and biennially thereafter (41).

Special session may be convened (43).

Sessions 60 days long, except that governor may extend 30 days (48). All proceedings in English language (44).

Bills must pass three readings on separate days (46), and final passage must be on majority vote of all members by ayes and noes.

Governor may veto appropriation bills in whole or in part (49).

Bills may be passed over veto by two-thirds vote (50).

"Shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States locally applicable."

**Scope of power.**

**Special limitations**

May create counties and town and city municipalities, and provide for the government thereof.

**Senate**

Composed of 15 members: 4 years; elected from 4 districts, alternating 7 and 8 biennially (30, 32).

Vacancies filled by election (31). Must be male citizens of United States, 30 years old, resided in Hawaii 3 years, qualified to vote for senators (34).

Each voter may cast one vote for each senator from district (61), and required number of candidates receiving highest number of votes shall be senators in district (61). Voters must have qualifications of voters for representatives, i. e., male citizen of the United States, residence 1 year in Hawaii, 3 months in district, 21 years old (60-62); must register, and be able to speak, read, and write English or Hawaiian (60).

Composed of 30 members, elected from 6 districts every second year (35). Term until next general election (36, 38). Vacancies filled at general or special elections (37); must be male citizens of United States, 25 years old, resided in Hawaii 3 years, and qualified to vote for representatives (40).

**House**

Each voter may cast a vote for as many representatives as are to be elected from district (59), and required number of candidates receiving highest number of votes are elected (59). Voters, male citizens of the United States, 21 years old, have resided in Hawaii 1 year, and in district 3 months; have registered, and able to speak, read, and write English or Hawaiian.

1. The legislature shall not grant any special or exclusive privilege, immunity or franchise without the approval of Congress.
2. It shall not grant private charters, but may pass general acts governing corporations.
3. It shall not grant divorces.
4. It shall not grant money for sectarian or private schools.
5. The Government, or any political or municipal corporation or subdivision of the Territory, shall not make any subscription to the capital stock of any corporation, nor lend it credit therefor.
6. The legislature shall not authorize any debt to be contracted except to pay interest upon existing indebtedness, to suppress insurrection, or to provide for the common defense—and except loans for the erection of penal, charitable and educational institutions, and for public works.

## 2. THE EXECUTIVE.

Governor (Sec. 66).	{ Appointed by President for 4 years and until successor is appointed and qualified. Shall be 35 years old and citizen of Hawaii. Salary, \$5,000 (92); \$500 incidentals, traveling, and \$2,000 for private secretary.
Powers and duties (66, 67).	{ Shall be commander-in-chief of militia; may grant pardons or reprieves for offenses against Territory and against United States, pending decision by President. When necessary may call upon military or naval forces of the United States in Hawaii, or summon posse comitatus, or call out militia; may suspend writ of habeas corpus or place Territory under martial law; has veto power; power of removal when not otherwise provided (80).
	Appointive power (80).
	<ol style="list-style-type: none"> <li>1. Judges circuit courts.</li> <li>2. Attorney-general.</li> <li>3. Treasurer.</li> <li>4. Commissioner of public lands.</li> <li>5. Commissioner of agriculture.</li> <li>6. Superintendent of public works.</li> <li>7. Superintendent of public instruction.</li> <li>8. Auditor.</li> <li>9. Deputy auditor.</li> <li>10. Surveyor.</li> <li>11. High sheriff.</li> <li>12. Members board of health.</li> <li>13. Commissioners of public instruction.</li> <li>14. Boards of registration and inspectors of elections.</li> <li>15. All other public boards.</li> </ol>
Secretary (66).	{ Appointed by President for 4 years and until successor is appointed and qualified. Salary, \$3,000 (92).
	{ Shall record and preserve all the acts and proceedings of the legislature and the governor, promulgate proclamations, and transmit to the President of the United States copies of the laws, journals, and executive proceedings. Shall act as governor in case of vacancy by death, removal, resignation, disability or absence of the governor.
Other executive officers appointed by the Governor for 4 years (80).	<p>Attorney-general (71).  Treasurer (72).  Commissioner of public lands (73).  Commissioner of agriculture and forestry (74).  Superintendent of public works (75).  Superintendent of public instruction (76).  Auditor and deputy auditor (77).  Surveyor (78).  High sheriff (79).</p>

## 3. THE JUDICIARY.

Hawaiian laws relative to, are continued in force, except as modified by this Act; subject to modification by Congress or legislature (83).

No person can sit as judge or juror who is related by affinity or consanguinity to parties within third degree or who shall be interested pecuniarily, personally, or through relatives who are parties (84).

## Hawaiian Courts (81).

1. Supreme court: One chief justice (salary \$3,500), and two associates (salaries \$3,000), appointed by the President of the United States by and with advice and consent of the Senate (82), and hold 4 years (80).

2. Circuit courts: The judges are appointed by the governor, and hold for 4 years (80).

3. Such inferior courts as the legislature shall from time to time establish (81).

President of the United States, by and with advice and consent of the Senate, shall appoint district judge (86). Shall have jurisdiction of cases commonly cognizable by both circuit and district courts (86).

Writs of error and appeals shall be had and allowed to the circuit court of appeals in the ninth judicial circuit of the United States.

District attorney, salary \$3,000, and marshal, salary \$2,500 (82), appointed by the President, by and with the advice and consent of the Senate (86).

The district judge shall appoint a clerk (salary \$3,000) and a reporter (salary \$1200).

## Federal District Court (86).

The total indebtedness that may be incurred in any one year by the Territory, or any such subdivision thereof, is limited to 1 per cent of the taxable property of the Territory or any such subdivision as shown by the last general assessment; and the total indebtedness of the Territory at any one time shall not exceed 7 per cent of assessed valuation; nor shall the total indebtedness of any such subdivision of the Territory at any one time exceed 3 per cent of any such assessed valuation. However, the Government is not prevented from refunding existing indebtedness at any time.

No loans are to be made upon the public domain, and no bonds or other instruments of indebtedness are to be issued unless redeemable in five years, payable in fifteen years, and approved by the President of the United States.

## SPECIAL TOPICS.

## 1. Delegate to Congress.

There shall be a delegate to the United States House of Representatives (to be elected by voters qualified to vote for members of the house of representatives of Hawaii), who shall possess qualifications of members of the senate of Hawaii; time, place, and manner of holding elections fixed by law (85).

## 2. Internal-revenue district.

The Territory shall constitute an internal-revenue district (87).

## 3. Customs district.

The Territory shall constitute a customs district with ports of entry and delivery at Honolulu, Hilo, Makukona, and Kahului (88).

## 4. Wharves.

Wharves and landings shall remain under control of Hawaii, and revenues derived therefrom shall belong to Hawaii, provided same are applied to their maintenance and repair (89).

## 5. Quarantine.

The quarantine regulations relating to the importation of diseases from other countries shall be under the control of the Government of the United States; but the health laws of the government of Hawaii relating to harbors and internal control shall remain in the jurisdiction of the government of Hawaii, subject to the quarantine laws and regulations of the United States (97).

6. Naturalization. { Previous residence in Hawaii shall be deemed equivalent to residence in the United States. The American regulation requiring a previous declaration of intention to become a citizen of the United States, etc., shall "not apply to persons who have resided in the islands at least five years prior to the taking effect of this Act" (100).
7. Chinese certificates of residence. { Chinese in Hawaiian Islands given one year to obtain certificates of residence as provided by the Act of Congress approved May 5, 1892, and amended November 3, 1896; but "no Chinese laborer, whether he shall hold such certificate or not, shall be allowed to enter any State, Territory, or District of the United States from the Hawaiian Islands" (101).

The provision (Sec. 6) extending the Constitution and laws of the United States placed the Chinese-exclusion law and the alien contract-labor law immediately in force in the Territory of Hawaii.

The joint resolution of annexation provided that there should be no further immigration of Chinese into Hawaii except as allowed by the laws of the United States, and that no Chinese, by virtue of anything contained in the joint resolution of annexation, should come to the United States from Hawaii.

#### 8. Hawaiian public lands.

The public-land system of the United States has not been extended to Hawaii. In some respects it is entirely inapplicable. It would be difficult to establish an arbitrary rectangular system upon a peculiar system long in practice.

The public-land system of Hawaii evolved from local conditions. The lands are already occupied, and, from the very nature of the soil and character of the inhabitants, are cut up into holdings of all sizes, the shape being generally that of an irregular triangle, with its base on the coast line and its apex toward the centre of the island.

There has already been established there a system of survey adapted to the natural formation and contour of the islands. For illustration, all the islands rise from the sea level, in some parts abruptly and in some parts gradually, to a central elevation, and for purposes of cultivation the land is naturally divided into lowland, fitted for the growth of taro and rice; next above this is sugar land, next coffee land, and then comes grazing and timber land.

Up to 1846 all the lands of the Hawaiian Islands belonged in legal contemplation to the king. The chiefs and the people, under a feudal system closely resembling the old English feudal system, held their respective parcels by rendering service or payment of rent. In 1846 King Kamehameha III. granted: (1) To his chiefs and people certain portions; (2) for government purposes certain portions, (3) and reserved the remainder.

By an act, June 7, 1848, the legislature accepted the king's grant and confirmed to the king, his heirs and successors, certain described lands which were thenceforth known as crown lands. Under an act organizing executive departments, a land commission was provided whose duty it was to receive and pass upon the claims of occupants and lands to their respective holdings in that portion of the land set apart for the chiefs and people. This commission heard the testimony of claimants, caused surveys to be made, and issued to the occupants entitled thereto certificates called "Land commission

awards." These awards established the right of the grantee to the possession of the land and entitled him upon payment of one-fourth of the value of the bare land to receive a royal patent. These awards and patents issued pursuant thereto are the source of all title to all lands not public lands or crown lands.

By an act of July 9, 1850, one-twentieth of all public lands are set apart for the support of schools. These lands are patented to a board of education, which was empowered to sell and lease. Part of these lands is used for sites for school buildings, part is leased, and part has been sold.

In 1884 a homestead law on a small scale was provided but was little used, only 256 patents having been issued in sixteen years.

In 1894, the legislature passed "the land act of 1895." By this act the crown lands were treated as having vested in the republic and were placed under the control of a board of commissioners, composed of the secretary of the interior and two persons appointed by the governor. They are now embraced as public lands, and are under the control of a commissioner of public lands. They are subject to alienation and other uses as may be provided by law (99).

The islands are divided into six land districts, with a subagent of public lands and ranges for each.

The public domain is divided into agricultural, pastoral, pastoral-agricultural, forest and waste lands.

The commissioners are authorized to dispose of these lands in the following manner:

1. At public auction for cash in parcels not exceeding 1,000 acres.
2. At public auction, part credit, in parcels not exceeding 600 acres.
3. Without auction sale, in exchange for private lands or by way of compromise.
4. By lease at public auction for not more than twenty-one years.
5. Homestead leases.
6. Right-of-purchase leases.
7. Cash freeholds.

Under the act of Congress approved April 30, 1900, the commissioner of public lands takes the place of the board of commissioners. The laws relating to public lands, the settlement of boundaries, and the issuance of patents on land-commission awards continue in force until Congress shall provide otherwise. But "no lease of agricultural land shall be granted, sold, or renewed by the government of the Territory of Hawaii for a longer period than five years until Congress shall otherwise direct." All funds arising from this disposal of such lands shall be appropriated by the Hawaiian government and applied for the benefit of the inhabitants (73).

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# STATE ACTIVITIES IN RELATION TO LABOR IN THE UNITED STATES



SERIES XIX

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History is past Politics and Politics are present History.—*Freeman*

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STATE ACTIVITIES IN RELATION TO  
LABOR IN THE UNITED STATES

By WILLIAM FRANKLIN WILLOUGHBY  
(*U. S. Department of Labor*)

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## PREFACE

It is a matter of interest to students both of economics and politics to trace the widening sphere of action of the American States in relation to labor. Something over ten years ago I had occasion, in a paper read before the American Historical Association,<sup>1</sup> to call attention to the fact that, whatever might be the general decline in importance of the individual commonwealths of our Union, a very great extension of their activities had taken place since the Civil War in respect to matters relating to the economic interests of their citizens. This intervention, as was then shown, was not in the way of the direct performance or even the promotion of works of public interest, but rather in the creation of boards, bureaus and commissions, having for their purpose, either the investigation and publication of economic conditions, as is done, for instance, by boards of agriculture, geological surveys, and bureaus of statistics of labor, or the supervision of particular lines of industry, such as banking, insurance, transportation, and factory and mine work.

This movement for the extension of state action has continued with unabated strength during the past decade in all the lines of activities there considered. In none, however, has this intervention advanced with greater rapidity, or proceeded further, than in that relating directly to conditions under which labor shall be performed. This action may be divided into two distinct classes; that in which the intervention of the state is limited to the mere enactment of laws in relation to labor, and that in which the state itself undertakes, through the executive branch of its government, to

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<sup>1</sup> State Activities and Politics.

perform certain work. The scope of the present chapters is restricted to a consideration of only the second class of these activities, namely, those wherein the state itself assumes the performance of certain duties. The general title of "state activities," rather than state action, in relation to labor has been selected, though it cannot be said that this choice of words adequately conveys the distinction that is made.

The substance of the pages that follow has been previously published in one form or another. The chapter relating to the inspection of factories was first published as a report to the International Congress in Relation to Labor Legislation, Brussels, 1897, and afterwards republished in Bulletin No. 12 of the U. S. Department of Labor. The one on inspection of mines appeared as a chapter in "The Mineral Industry: Its Statistics, Technology and Trade, 1896," and it is desired here to acknowledge the kindness of Mr. Richard P. Rothwell, its editor, in permitting its use in this place. These two and the other papers also constituted numbers of the series of "Monographs on American Social Economics," edited by Prof. Herbert B. Adams and published by the Department of Social Economy for the United States Commissioner to the Paris Exposition of 1900.

It is thought that a useful purpose will be served in bringing these papers together in a single monograph, as they cover in a fairly complete way the action of the American States in a distinct line of effort. All the papers, it should be said, have been rigidly revised with the purpose of eliminating unnecessary matter, bringing the information to date, and making it harmonize with the scope of the present monograph.

# STATE ACTIVITIES IN RELATION TO LABOR IN THE UNITED STATES

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## CHAPTER I.

### BUREAUS OF STATISTICS OF LABOR.

To the United States belongs the honor of having first created an official bureau for the special purpose of collecting and publishing statistical information in relation to labor. The first official action looking toward this end is to be found in the report of a special commission of the legislature of Massachusetts, February 6, 1866, which among others things, recommended "that provision be made for the annual collection of reliable statistics in regard to the condition, prospects and wants of the industrial classes." In the following year, January 1, a second commission unanimously recommended "that a bureau of statistics be established for the purpose of collecting and making available all facts relating to the industrial and social interests of the Commonwealth." In pursuance of these recommendations Massachusetts created the first bureau of labor statistics by a law dated June 22, 1869.

The example of Massachusetts, which had thus led the way, was soon followed in 1872 by Pennsylvania, and in 1873 by Connecticut. Since then the number of states maintaining such bureaus has constantly increased until at the present time there are 29 states with such offices. In addition to these a number of states have created bureaus, a part of whose duties is apparently, according to provisions of the laws creating them, the collection of statistics of labor. As they have, however, done little or nothing, as yet, in the

way of publishing labor statistics they are not included in the number given above. Two states, South Dakota and Utah, created bureaus of labor, but have since abolished them. In 1884 the United States created a bureau of labor under the interior department, which in 1888 was transformed into the existing department of labor.

In the following statement is given a list of the bureaus of labor statistics existing in the United States and the year in which they were established. In a number of cases the bureaus were not organized for work till the year following that in which they were created.

It would not be practicable to give the organization of each of these bureaus. In general the personnel of each bureau consists of a chief or commissioner and occasionally a deputy commissioner appointed by the governor of the state, and a few clerks, often not more than two or three. Special mention, however, should be made of the organization of the Kansas bureau as reconstituted by the recent law of January 11, 1899.

This law provides for a radical departure from the method employed by the other states in the organization of the bureau and the selection of its officers. The law in brief provides that any organization of seven or more working men for the purpose of studying labor conditions or the improvement or promotion of the branches of labor represented by them, or for certain other purposes, shall have the right of sending one delegate for the first 50 members or fraction thereof and one delegate for each additional 10 members to the annual meeting of the State Society of Labor and Industry to be held at the state capital.

Upon assembling, these delegates shall organize as the State Society of Labor and Industry above mentioned, and shall elect a president, vice-president, secretary and assistant secretary, which officials shall constitute a state bureau of labor and industry, and the secretary shall be ex-officio the commissioner of the bureau. The president and vice-president are elected annually, but the secretary and assistant

No.	State.	Official name of office.	Year established.
1	Massachusetts....	Bureau of Statistics of Labor.....	1869
2	Pennsylvania.....	Bureau of Industrial Statistics.....	1872
3	Connecticut.....	Bureau of Labor Statistics.....	1873 <sup>1</sup>
4	Ohio.....	Bureau of Statistics of Labor.....	1877
5	New Jersey.....	Bureau of Statistics of Labor and Industries }.....	1878
6	Indiana.....	Bureau of Statistics.....	1879
7	Missouri.....	Bureau of Labor Statistics and Inspection }.....	1879
8	Illinois.....	Bureau of Labor Statistics.....	1879
9	California.....	Bureau of Labor Statistics.....	1883
10	Wisconsin.....	Bureau of Labor and Industrial Statistics }.....	1883
11	New York.....	Bureau of Labor Statistics.....	1883
12	Michigan.....	Bureau of Labor and Industrial Statistics }.....	1883
13	Maryland.....	Bureau of Industrial Statistics and Information }.....	1884
14	Iowa.....	Bureau of Labor Statistics.....	1884
15	United States....	Department of Labor.....	1884 <sup>2</sup>
16	Kansas.....	State Bureau of Labor and Industry..	1885 <sup>3</sup>
17	North Carolina ...	Bureau of Labor Statistics.....	1887
18	Maine.....	Bureau of Industrial and Labor Statistics }.....	1887
19	Minnesota.....	Bureau of Labor Statistics.....	1887
20	Colorado.....	Bureau of Labor Statistics.....	1887
21	Rhode Island.....	Bureau of Industrial Statistics.....	1887
22	Nebraska.....	Bureau of Labor and Industrial Statistics }.....	1887
23	West Virginia....	Bureau of Labor.....	1889 <sup>4</sup>
24	North Dakota ....	Department of Labor and Statistics...	1889
25	Tennessee.....	Bureau of Labor Statistics and Mines.	1891
26	Kentucky.....	Bureau of Agriculture, Labor and Statistics }.....	1892 <sup>5</sup>
27	Montana.....	Bureau of Agriculture, Labor and Industry }.....	1893
28	New Hampshire...	Bureau of Labor.....	1893
29	Washington.....	Bureau of Statistics, Labor, Ag- riculture and Immigration }.....	1895
30	Virginia.....	Bureau of Labor and Industrial Statistics }.....	1898

<sup>1</sup> Abolished in 1875; reestablished in 1885.<sup>2</sup> Created as a bureau under the Interior Department in 1884; established as a department in 1888.<sup>3</sup> Reorganized by law of January 11, 1899.<sup>4</sup> First report published in 1894.<sup>5</sup> First established March 20, 1876, as Bureau of Agriculture, Horticulture and Statistics. It was reorganized, had its duties enlarged, and was given its present title April 2, 1892.

secretary hold office for two years and can be reelected. A permanent office for the bureau is provided in the state capitol. Provision is also made for a stenographer, and the commissioner is given the power to employ special agents and other assistants as may be necessary. The following salaries and appropriations for the work of the bureau are provided by the act: commissioner \$1500, assistant commissioner \$1200, stenographer \$720, for special agents and other assistants \$800, for postage and expressage \$800, traveling and other expenses \$1500.

The powers and duties of the bureau are practically the same as those of other state bureaus of labor. The most significant feature of this scheme is that it provides for the creation under state auspices of a general society to consist of delegates of labor organizations, and that the appointment of officers of the state bureau of labor and therefore their control is taken away from the governor and given to this society and therefore absolutely into the hands of the workmen themselves. The law is a unique piece of legislation, and its workings may be followed with interest.

Regarding the resources at the command of these labor bureaus the appropriations for their support are usually small in amount, being but little more than sufficient to pay the salaries of the commissioner and his assistants. The United States department of labor, on the other hand, possesses an effective organization. At its head is the commissioner of labor. Under him the force consists of a chief clerk, a disbursing clerk, four statistical experts, 51 clerks, messengers and laborers, and 20 special agents. In addition, from 20 to 30 experts are carried on the temporary roll, their salaries being paid from a special appropriation for the payment of the expenses of agents in the field and the employment of extra experts as required by the work of the department. The total force of the department thus varies from 110 to 115. The work of the department is clearly divided into field and office work. The 20 special agents constitute the field force and except in rare cases are con-

tinuously in the field collecting the information desired by the department. When necessary, they are assisted by members of the office force temporarily detailed for that purpose.

The total regular appropriation for the department for the year, 1899-1900, was \$172,980. This does not include \$8000 appropriated to defray the cost of the printing and binding required by the department in the prosecution of its work, nor the cost of printing and binding the regular reports and bulletins of the department.

Turning now to the duties of these bureaus, their primary function in all cases is the publication of material showing labor conditions; and these offices are therefore, in spite of their various titles, known under the general name of labor bureaus. It is important to note, however, that the efforts of most if not all of the bureaus are directed towards obtaining and publishing information concerning social conditions other than those strictly relating to labor. Thus the act creating the Massachusetts bureau, which has served as the model for the acts of the other states, says that "the duties of such bureau shall be to collect, assort, systematize and present in annual reports . . . statistical details relating to all departments of labor in the Commonwealth, specially in its relations to the commercial, industrial, social, educational and sanitary condition of the laboring classes, and to the permanent prosperity of the productive industry of the Commonwealth."

The law creating the United States department of labor gives the new department, if possible, even broader powers to investigate any subject at all concerning the economic or industrial condition of the country. Section 1 of the law thus reads: "There shall be at the seat of the government a department of labor, the general design and duties of which shall be to acquire and diffuse among the people of the United States useful information on subjects connected with labor in the most general and comprehensive sense of that word, and especially upon its relation to capital, the

hours of labor, the earnings of laboring men and women and the means of promoting their material, social, intellectual and moral prosperity."

Acting either under their general powers, or as the result of specific legislative powers, most of the bureaus, therefore, publish statistics concerning subjects other than labor as agriculture, production, penal and reformatory institutions, education, taxation, etc.

The results of the investigations made by the bureaus are for the most part published in annual or biennial reports. The majority of the bureaus issue annual reports. Those of the following states, however, publish theirs biennially: Indiana, Illinois, California, Wisconsin, Maryland, Iowa, Minnesota, Colorado, Nebraska, North Dakota, Washington and Virginia. It will be seen that with the exception of Maryland and Virginia the practice of issuing reports biennially is confined to the middle western and western states.

In a number of cases publications other than the regular annual or biennial reports are issued. The United States department of labor thus issued special reports, and since November, 1895, issues a bimonthly bulletin. The Massachusetts bureau publishes the results of the state censuses, an annual report concerning manufactures, and since January, 1897, a bulletin which appears quarterly. The New York bureau likewise issues a quarterly bulletin. The Illinois bureau makes an annual report concerning coal mining, and a number of bureaus issue bulletins giving the labor laws of the states.

The main purpose of these bureaus, as has been said, is the collection and publication of information in relation to labor and social conditions generally. In addition to this duty, however, these bureaus have, in a number of cases, been entrusted with other duties. A brief mention should be made of these in order to give a complete idea of the character and activities of these bureaus.

At least two of the states, Massachusetts and Rhode Island, provide that the state census shall be taken by these



offices. In a number of cases the commissioner of labor has been entrusted with the duties of factory inspection and the enforcement of the labor laws of the state. This is true of the states of Maine, Michigan, Minnesota, Missouri, Nebraska, Tennessee, Washington and Wisconsin. In two of these states, Missouri and Tennessee, the commissioner of labor is also required to act as the inspector of mines. In Maine there is a special inspector of factories, but he is required to report to the commissioner of labor, and his reports are published in the annual reports of the latter.

In North Dakota and Missouri the commissioner of labor is directed to intervene in labor disputes for the purpose of attempting their mediation or arbitration, and by the recent act of June 1, 1898, the United States commissioner of labor is directed, in conjunction with the chairman of the Interstate commerce commission, to act in much the same way for the settlement of labor disputes affecting railroads engaged in interstate traffic.

Within recent years a very important movement has developed for the creation of free public employment bureaus. Such action has been taken by the states of Ohio, New York, Illinois, Missouri, California and Maryland, and in all cases these offices are placed under the supervision or direct management of the state bureau of labor. In the three states first named quite elaborate systems have been created, and their work thus constitutes a not unimportant part of the services of the bureaus of labor to which they are attached. Further details are not given, as a full account of their organization and operation will be found in the special chapter devoted to that subject.

A few words should be said regarding the system of work of the United States department of labor, a system also employed in Massachusetts, as it constitutes the most scientific application of the statistical method attempted in any statistical bureau, and as such has profoundly influenced methods of statistical inquiry throughout the world. The system is one which originated in this country and thus

constitutes a positive contribution on the part of the United States to statistical science. It is thus described by the commissioner of labor:

The information under any investigation is usually collected by properly prepared schedules of inquiry in the hands of experienced special agents, by which means only the information which pertains to the investigation is secured. Rambling and nebulous observations, which would be likely to result from an investigation carried on by inquiries not properly scheduled, are thus avoided. The great advantages of this method have been demonstrated by many years of experience. Sometimes the peculiar conditions accompanying an investigation admit of the use of the mail, but as a rule the attempt to collect information upon any given subject under investigation through the mail has proved a failure. With properly instructed special agents, who secure exactly the information required, who are on the spot to make any explanation to persons from whom data are sought, and who can consult the books and accounts at the establishment under investigation, the best and most accurate information can be secured, and in a condition for tabulation; in fact, sometimes under this method the tabulation is partially accomplished by the form of inquiry and answer as shown by the schedule.

After the information is brought into the office the schedules containing it are subjected to the most careful scrutiny for the purpose of ascertaining whether there are any logical faults or incongruities in it. If such are found the agent furnishing it is called upon to verify his work. Under such circumstances a schedule could not be accepted, and there must be a reexamination. When the schedules are all verified the classifications and tabulations are made, every calculation being subjected to rigid verification in the preparation of copy for the press, and in the reading of the proof all original calculations must again be verified, all references examined, and every care taken to guard against typographical as well as clerical errors. Figures from the officers of the department or from the most skilled expert in it are never allowed to be printed until verified.

It is not an easy matter to set forth the specific way in which these organizations have justified their creation through reforms brought about as the result of their work. The same difficulty is here met with as in the effort to show the good resulting from the work of a university. We know, nevertheless, that they have accomplished a great deal of good. Col. Wright, the United States commissioner of labor, in his article on "The value and influence

labor statistics" in the *Engineering Magazine* for November, 1893, enumerates a number of instances in which positive remedial legislation of great value has resulted from their investigations. Among these were laws removing evils connected with tenement houses, the truck system, employers' liability, employment agencies, sweating system, etc.

On the other hand it is well to admit that the work of many of the bureaus is far from as valuable as it is desirable that it should be, and there are few classes of social data that should be used by students of economics with greater discrimination.

While the work of many of the older bureaus is of a high order, that of others, owing either to the smallness of the appropriations available for their support, or because the need for trained economists or statisticians as their directing heads is not recognized, is of comparatively little value. In this connection it is a matter of congratulation to note the calling of a specialist in economics, Dr. Adna F. Weber, by the state of New York as Deputy Commissioner of Labor, an action which has already borne fruit in a number of interesting reports.

In spite of this failure on the part of a number of the bureaus to reach the highest standard in their work, few will deny that, as a whole, the results achieved have justified their creation. In a democratic country such knowledge of conditions as they give may almost be said to be essential. For one reason or another many of the best writings of economists never reach the eyes of the actual business man and worker. The labor reports receive a wide circulation among such classes of the population, and but for them the industrial population would have little opportunity of gaining information concerning labor conditions in their general aspects as affecting the whole people.

## CHAPTER II.

### EMPLOYMENT BUREAUS.

An examination of the subject of employment bureaus in the United States involves a consideration of two distinct kinds of institutions: private employment offices, or intelligence agencies, as they are frequently called, and free public employment bureaus organized in connection with the bureaus of labor statistics of a number of the states. The aims and purposes of these two kinds of institutions are radically different. The first are purely money-making undertakings organized by individuals for the purpose of personal gain. The second are organized under the auspices of the state and are public institutions for the assistance of the working classes. The first are now looked on often as an evil; the second are beneficent institutions contributing to the welfare of the laboring men.

Though the consideration of the regulation of private employment bureaus does not properly fall within the scope of our present study, it is necessary to give some reference to it in order to show the reasons leading up to the decision of the states to maintain such bureaus as state institutions.

Private employment agencies have existed in the United States for a great many years. They seem to have been very prosperous undertakings from the standpoint of financial gain to their promoters, as it is not unusual for as many as forty or fifty offices to be found in a single city. Apparently there is no reason why such agencies, especially in the absence of a free employment bureau, could not be of considerable use in assisting the unemployed to find positions, and there is little doubt that in some cases where they are honestly administered good is accomplished. The trouble

is that such cases of honest management form the exception. Having to do with an ignorant and helpless class these agencies are in a great many cases but institutions for defrauding and victimizing the poor people. Exorbitant fees are charged for the mere registering of applicants for work, and afterwards little or no effort is made to secure positions for them. Advertisements are inserted in the daily newspapers for laborers of a certain class when there is not the slightest demand for such labor. In fact, all sorts of deception and extortion are resorted to. In some cases the office is in connection with a saloon, in order to get the applicants to spend the little money they have in drink while waiting for employment.

The state labor bureaus have repeatedly made investigations of these employment agencies, always with the result that they were condemned as injurious institutions. Thus the commissioner of the Missouri labor bureau in his report for 1897 says:

Not all of the employment agencies can be classed as fraudulent, but in all the investigations made by this department in St. Louis alone, a large majority of them were found to outrival in their methods the worst gambling and confidence games in this city. Yet their systems of robbery are so cunningly devised and so skillfully operated that it is almost impossible to convict them under the existing law.

The Maryland commissioner of labor, as a result of a special examination of these agencies, in his report for 1896 says:

The inquiry, together with what came under our immediate notice, emphasized that reliable agencies were able to do some good, but that the unreliable ones would justify a statement to the effect that their existence is a standing menace to those compelled to seek the aid of employment agencies, greatly overshadowing all other considerations, and causing people to concur in the opinion that the unemployed would have a less rugged road to travel without this proffered assistance.

It is unnecessary to comment further on these abuses. It is sufficient to say, that not only has the establishment of

employment agencies under private auspices contribute but little or nothing to the solution of the problem of unemployment, but their existence has developed evils which far outweigh any advantages obtained in isolated cases. The result of these abuses is that in quite a number of states special legislation has been enacted looking to their suppression or at least rigid control. The essential character of this legislation can be briefly set forth:

An examination of the labor laws of the states shows that 12 states, Colorado, Illinois, Louisiana, Maine, Massachusetts, Minnesota, Montana, Missouri, New Jersey, New York, Pennsylvania and Rhode Island, have enacted legislation of some kind in regard to employment agencies.

Of these, the laws passed by a great many of the states are of comparatively little importance. The laws of New Jersey and Rhode Island simply provide that the cities and towns of the state, may, if they desire to do so, require any person desiring to open an employment agency to obtain a license from the municipal authorities, and may fix the sum to be paid for such license. The Missouri law merely makes it a misdemeanor punishable by law for an employment agency to accept a fee or remuneration of any kind unless a situation is secured for the person making the payment. The Massachusetts law in like manner prohibits the taking of a fee unless a position is secured. The Louisiana law provides that persons desiring to conduct employment agencies must obtain licenses and give a suitable bond. The Colorado law fixes the amount to be paid for a license at not more than \$100, and requires a bond of \$2000. The Pennsylvania law fixes the license fee for employment agencies at \$50, and provides that the proprietor of any such agency giving false information or making false promises concerning positions to be obtained shall be deemed guilty of a misdemeanor and be prosecuted criminally by the state. The New York law is very similar. In Minnesota the license fee is fixed at \$100 and the bond at \$10,000. In Illinois the license fee is \$200 and the bond \$1000. The

Maine law says that the mayors of towns may grant licenses to employment agencies on the payment of \$1, and prohibits the charging of a fee unless a position is secured.

It will be seen from the foregoing that the legislation in all of the states taking action in regard to this question is along the same lines. The essential points are: that a license must be obtained; that no fees can be collected unless a position is secured for the person making the payment; that a bond must be given from which damages resulting from any fraud or misrepresentation on the part of the agency may be paid; and that any agency making fraudulent misrepresentation or promises shall be deemed guilty of a misdemeanor, and as such, amenable to criminal prosecution. No one law embraces all these points. But the enumeration given indicates the points covered and shows the general character of the legislation. The text of all these laws may be consulted in the report of the Department of Labor on labor laws in the United States, second edition, 1896 (see heading "employment agencies" in index for references to exact pages), and the Bulletins of the Department.

From the study of private employment agencies organized as money-making schemes, we now turn to an examination of the much more interesting class of free employment bureaus organized under the auspices of the state. It is possible that some of the cities may have organized municipal employment bureaus, but if they have done so it is impossible to obtain any detailed information concerning them.<sup>2</sup> During the industrial depression beginning with the year 1893 a great many of the cities did more or less in the way of attempting to find employment for those out of work. Such action was, however, temporary and can not be considered as creating employment bureaus properly speaking. Our examination here, therefore, must

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<sup>2</sup> Since the above was written, information has been received of the interesting and important municipal employment bureau of Seattle, Washington.

be restricted to the employment bureaus organized by the state bureaus of labor.

At the present time there are quite a number of such bureaus in operation. The beginning was made by the state of Ohio in 1890. It may not be uninteresting to call attention to the fact that the creation of the Ohio bureau, and, therefore, the inauguration of free employment bureaus in the United States, is directly due to the influence of similar institutions in France. On the occasion of the Paris international exposition of 1889, a league of newspapermen sent a delegation of prominent labor men to Europe to study old world conditions. Among the members of this league was W. T. Lewis, who afterwards became the chief of the Ohio bureau of labor statistics. Mr. Lewis was particularly impressed with the work of labor bureaus in Paris and brought it to the attention of the laboring people of Ohio. The Municipal Labor Congress of Cincinnati, an organization of the trade and labor unions of the city, took the matter up, and urged the creation of a similar institution in Ohio. Its recommendation was favorably received, and a law was passed in 1890 directing the commissioner of labor to create in each of the five principal cities of the state a free public employment bureau.

For some time this action on the part of Ohio remained without imitators on the part of other states. The results accomplished, however, attracted attention, and other states began to examine the question. On May 28, 1896, New York passed a law requiring the organization of a similar office in New York city by the bureau of labor of the state, and on April 13, 1897, the state of Nebraska did the same. Finally Illinois by Act of April 17, 1899, has made the most elaborate provision for the establishment of a system of free public employment bureaus yet attempted by any state.

Though these are the only states that, by legislation, have specifically authorized the creation of a free state employment bureau, in a number of others the commissioner of labor have believed that they had the power under the



general acts creating their bureaus to establish such offices. Missouri, California, Kansas and Maryland thus created free employment bureaus in connection with their labor bureaus which are identical in character with those specifically created by law. The California bureau was created about July, 1895, when a great many workingmen and women were out of employment, and its expenses were entirely borne by private subscription. It continued in operation only about a year, as the return of better times removed the pressing need of its services.

The Kansas bureau is conducted on a small scale. The commissioner of the labor bureau writes:

By reason of our close touch to organized labor and the workingmen in this state, we have established a voluntary free employment agency where both the employers and persons seeking employment may register and thereby be aided to employment. This voluntary agency may be said to be local in its character, being confined largely to the city and vicinity.

In 1893 Montana, in the law creating a bureau of labor statistics, provided that its commissioner should maintain in his office a free public employment bureau, and also granted permission to any city to open a similar office if it desired to do so. In 1897, however, that portion of the law requiring the commissioner of labor to maintain a free employment bureau in his office was repealed. It was provided, however, that the employment bureaus established by the cities should report to the commissioner of labor and he in turn to report on their operation.

At the present time, therefore, free public employment bureaus are maintained by the labor bureaus of seven states, Ohio, Nebraska, New York, Illinois, Missouri, Kansas and Maryland.

Of these bureaus, the system recently created by Illinois is much the most elaborate and consequently bids fair to be the most important. In the following paragraphs its most essential features are briefly summarized.

The law provides that a free public employment bureau

shall be created in each city of the state with a population of 50,000 or over, and that three such offices shall be opened in every city (of which Chicago is the only example) containing a population of 1,000,000 or over. These offices are to be designated as "Illinois free employment offices." On the recommendation of the commissioner of labor, the governor shall appoint a superintendent, assistant superintendent and a clerk for each of the offices, with salaries of \$1200, \$900 and \$800 per annum respectively. Such sums as are necessary for defraying the cost of equipping and maintaining the office shall be furnished by the treasury of the state. Each office must have in front a conspicuous sign bearing the words "Illinois free employment office."

The superintendent of each of the offices must receive and record in books kept for that purpose the name, address and character of employment or help desired of each person applying for employment or help. Separate rooms shall be provided for the men and women registering for situations or making applications for help.

It is readily understood that the vital point in the organization of an employment bureau is the devising of means for obtaining knowledge of persons and firms who are in need of help. To this end the law requires that it shall be the duty of the superintendents to put themselves in communication with the principal manufacturers, merchants or other employers of labor and seek to secure their active cooperation. Each superintendent can also expend not more than \$400 yearly in advertising in the columns of the daily newspapers or otherwise. It is also the duty of all factory and coal mine inspectors to do all in their power to assist in securing situations for applicants for work. They must immediately notify the superintendent of the employment office of any opportunities for employment that come to their notice, describe the character of work and causes of scarcity of workmen, and seek to secure for the employment offices the cooperation of employers in factories and mines in every way possible. The services of these offices

shall be absolutely free. No fee or compensation of any kind shall be charged either directly or indirectly.

The duties of a state employment bureau in case of vacancies caused by strikes is often a difficult one for determination. To obviate any friction that might arise in such cases, the law provides that in no cases shall help be furnished employers whose employees are on strike or locked out; nor the list of applicants for work be shown to such employers.

In order that the work of the different offices may be unified and centralized each superintendent is required to report on the Tuesday of each week to the state bureau of labor the number of applicants for employment or for help, the number of unfilled applications remaining on the books, the number of situations desired and the number of persons wanted at each specified trade or occupation, and the number and character of the positions secured during the week.

On the receipt of these lists and not later than Saturday of each week the bureau of labor must cause to be printed the information thus received from all the offices, and mail to each superintendent two copies, one to be kept on file and one to be conspicuously posted in each employment office; copies must also be mailed to each state inspector of factories and inspector of mines.

In addition to these weekly reports each superintendent must make an annual report to the state bureau of labor statistics setting forth the work performed by his office and the expense incurred by him, and these reports shall be published annually by the bureau. Each superintendent is also required to perform such other duties in the collection of statistics of labor as the labor bureau may require.

There remains another feature of this law that is of special interest to students of social conditions. Careful provision is made for the collection of sociological data concerning applicants for work, in order that statistical material may be obtained for studying the causes and extent of unemployment. The law thus requires that a special

register must be kept for applicants for employment, showing the age, sex, nativity, conjugal condition and occupation of each applicant, the cause and duration of his or her unemployment and the number of dependent children, together with such other facts as may be required by the bureau of labor statistics for its use. As this information is sometimes of a character that individuals are unwilling to have generally known, the law wisely provides that this register shall not be open to general public inspection, and the material when published must not reveal the identity of any person figuring in the register. Furthermore, the applicants for work can decline to answer any of these questions if they desire to do so.

The employment offices established by the other states can be more briefly considered. In general, the system created is a very simple and inexpensive one, and is much the same in all the bureaus whether created by a specific law or organized under the general law creating the labor bureau. The commissioner of the Missouri bureau describes his method of conducting the affairs of the bureau as follows. Its reproduction will serve to show the manner of action in all the other bureaus.

The plan of operation is extremely simple and businesslike, and entirely devoid of red tape. Applicants for employment are required to file their applications on a blank furnished by the department; giving their name, address, age, sex, nativity, kind of employment desired, wages required, when last employed, cause of idleness, reference as to character, etc., etc. All such applications are registered for 30 days and then dropped from the list when employment is not secured. Applicants have the privilege of renewing their applications every 30 days if they desire till employment is secured. Persons desiring help are required to file an application in the same manner on a blank furnished by the department, stating in exact terms the kind of laborer wanted, wages, term of service, etc., which application is also registered for the term of 30 days, or till help is secured.

Whenever applications are received, and registered, a number of parties making application for the position designated are promptly notified by postal card and given the address of the applicant for service. In this way the unemployed and the employed are brought together with little difficulty, and at no more expense than the cost

of a postage stamp. All possible care is taken to prevent the registration of irresponsible parties.

**RESULTS ACHIEVED.**—An account of the workings and results achieved by these various bureaus constitutes a part of the regular reports of the commissioners of the states having these bureaus. The majority of these bureaus, however, have been so recently created that an opportunity is not afforded of judging results. The work done in Ohio is by far the most important, both because it is there that the system was first inaugurated, and has therefore been in operation the longest, and because bureaus are organized in five different cities instead of in a single one as in most of the other states. In order to show the workings of these bureaus, the following table has been compiled which shows for all five cities combined, the number of persons making application for work each year and the number for whom positions were secured each year since the establishment of the system:

Year.	MALES.		FEMALES.		BOTH SEXES.	
	Applica- tions for work.	Positions secured.	Applica- tions for work.	Positions secured.	Applica- tions for work.	Positions secured.
1890.....	14,539	5,575	5,607	3,418	20,136	8,988
1891.....	21,457	6,967	12,914	8,628	34,371	15,596
1892.....	15,522	5,905	11,424	7,840	26,946	13,745
1893.....	14,169	4,566	12,685	8,635	26,854	13,201
1894.....	14,521	2,140	14,616	7,626	29,137	9,766
1895.....	14,165	2,677	13,793	9,048	27,958	11,725
1896.....	12,668	2,781	15,030	10,164	27,698	12,945
1897.....	13,159	3,912	13,298	13,135	26,457	17,047
1898.....	12,778	3,930	12,324	13,278	25,102	17,208
1899.....	15,259	5,058	10,886	9,931	26,145	14,989

It will be noticed, as the most striking fact brought out by this statement, that during recent years at least, positions have been secured for from one-third to one-fourth of all male applicants for work, while in the case of females the number of positions secured about equals and, in the case of 1898, exceeded the number of applicants. The report for 1899 states that during that year there were applications from employers for 6216 male and 17,681 female workers. In both cases, therefore, there was a larger number of applications for help than there were positions secured. The report unfortunately does not state the kind of occupations for which positions were obtained. There is reason to believe, however, that the positions filled called largely for domestic and unskilled labor.

The California bureau of employment was established July 15, 1895. During the only year of its operation, applications for employment were received from 18,920 persons, of whom 14,251 were men and 4669 were women. Positions were secured for 5845, of whom 3314 were men and 2531 were women. The report of the commissioner of labor for 1895 and 1896 gives a great many details concerning the character of the applicants, their ages, whether able to read and write, their occupations, wages, etc. It is evidently impracticable, however, for us to attempt to reproduce these figures here. It should be stated that in order to enable the commissioner of labor to carry on this work a number of the leading manufacturers raised \$1000 which they placed at his disposal for this purpose.

The Missouri bureau was not organized until October, 1897. The report of its operation during the year ending October 1, 1899, shows that it received during the year applications for positions from 4849 persons, of whom 3933 were males and 916 females. Applications for help on the part of employers were made for 2119 males and 1072 females. The number of positions secured was 2318, of which 1647 were for males and 671 for females. The returns show the occupations of all persons applying for work

and of those who secured positions. Among the males the most important classes of positions, as regards the success achieved in finding employment, were: salespeople and solicitors, 280 positions secured, farm help 145, office help 140, ordinary laborers 120, miners 101, cooks 91, engineers and firemen 76. Generally the bureau seems to have been of assistance to most of the classes of labor skilled as well as unskilled.

The Nebraska bureau was opened May 1, 1897. The commissioner of labor expresses himself as highly pleased with the results attained. During the period of twenty months from May 1, 1897, to December 31, 1898, 1040 applications for work were received, and 218 persons were found positions. In spite of the optimistic expression of the commissioner these figures would not seem to indicate any considerable success achieved.

The New York bureau, in pursuance of the act of 1896, was organized July 20 of that year. The following figures, summarizing its operations during the past three years, show that this bureau has become one of the most important in the United States:

		Male.	Female.	Total.
Applicants for employment	1897....	3,996	3,819	7,815
	1898....	2,487	2,613	5,100
	1899....	2,135	3,154	5,289
Applicants for help	1897....	418	1,684	2,052
	1898....	302	2,344	2,646
	1899....	99	2,944	3,043
Number secured situations	1897....	378	1,127	1,505
	1898....	234	1,786	2,020
	1899....	98	2,308	2,401

These figures show that the growth that has taken place in operations of the bureau is entirely in the placing of females; indeed, the superintendent reports that it is impossible to meet the demand for female help. In connec-

tion with these figures, it should be borne in mind that the bureau pursues the laudable policy of seeking to ascertain the qualifications of applicants for positions before they are recommended for employment. The superintendent, thus, in his report for the quarter ending June 30, 1899, says: "Every effort has been made to ascertain the qualifications of applicants for the work sought. Letters asking for information from former employers as to the character and ability of the applicants have been very much to the credit of the people who seek to place their labor with us. As to the people for whom we have found employment, few complaints have been made, indeed, as to their ability and qualifications, and in but two cases was the complaint made by the employee that the wages were not paid as per agreement, and a letter from this office to the employers has been successful in righting any such wrongs."

The Maryland bureau was organized in 1896. Until September, 1900, its operations were conducted entirely by mail; and its work was of little importance. Since then personal interviews are held with applicants, and the scope of the work has been much broadened. It is still, however, the least important of the seven bureaus. No report concerning its operations has been obtainable.

The two prominent features brought out by the preceding study are: 1) that private employment agencies do little for the solution of the problem of unemployment, but on the other hand are often so dishonestly conducted as to make them undesirable institutions; and 2) that the system of employment bureaus organized under the auspices of the state bureaus of labor may now be said to be definitely established in the United States. It is with these institutions that we are chiefly interested.

An examination of the work of the various bureaus which have been created, short as is their experience, convinces us that they are institutions which can be of great service to the workingman. To do this, however, it is necessary that they should be conducted with the greatest care and



tact. If their affairs are merely managed in a perfunctory or routine way, but little success can be anticipated. The permanent prosperity and development of the bureaus depend to a high degree on the zeal and ability of the persons in charge.

The first and most important consideration to be observed is that the work of these bureaus should not be confounded in any way with that of charity bureaus. The function of an employment bureau is not to help the incapable class which ordinarily seeks assistance from public charity, but to aid the honest workingman who is willing and able to work but can not find employment.

A second point is that though the bureau is conducted in the interest of the workingmen, chief attention must be directed to giving satisfaction to the employers to whom labor is furnished. It is evident that the success of an employment bureau is entirely dependent upon gaining the confidence of the employers of labor. To do this it is necessary that the bureau should use extreme caution and discrimination in recommending any applicant for employment, unless it has every reason to believe that the person is fitted by his personal character and skill to fill the position to the satisfaction of the employer. It should not be the aim of the bureau to find employment for every applicant. It is evident that a great many of these belong to the class of incapables, and to recommend them for employment would injure the reputation of the bureau. The principle should be firmly established that a selection of the most fit will always be made.

Another important point as regards the policy of the bureau is mentioned in the Ohio labor report for 1896. The commissioner there says:

The employment offices should not be allowed to furnish any help in case of a labor dispute or strike of any kind; and I strongly recommend a ruling of the department on this subject. As it now stands there is no guide in this matter except the superintendent's own feelings and sense of right. Certainly the state of Ohio ought not to allow itself to be made a party in any sense in

such troubles. The state establishes these offices on the request and through the instrumentality of the labor unions, for the benefit mainly of the laboring people, and the offices should not be allowed to assist in an injury to them.

It will be remembered that Illinois in her law makes provision for such cases as this along the lines here laid down. It is only proper to state that in the United States no trouble has ever arisen in regard to this question. The danger nevertheless is one that is always present and should be guarded against as suggested.

The final point that it is desired to comment on is the necessity for joint action by the different bureaus in the same state such as is provided for in the Illinois law, and when there is but one bureau, the advisability of having branch offices in the different industrial centers. The lack of employment is often geographic. Labor of a certain kind may be superabundant in one section and lacking in another. An employment bureau to realize its full usefulness, therefore, should acquaint itself with labor conditions throughout the state, and thus be able to equalize the demand and offer of labor in the different sections of the country.

### CHAPTER III.

#### THE INSPECTION OF FACTORIES AND WORKSHOPS.

Factory inspection in the United States has followed and grown in consequence of the enactment of laws regulating the condition of labor in factories and workshops. A little consideration will show that these two classes of legislation are entirely different in character. The province of the first is to specify conditions; of the second, to see that they are enforced. The name inspection is in some respects misleading. The real duty of factory inspectors is to enforce laws. Their powers of inspection are but incidental to this duty, and are exercised in order that the latter may be more efficiently performed. Yet, in the majority of the states having factory laws, the inspection of factories was first provided for, and the power of issuing orders directing factory operators to comply with the provisions of the laws, or at least the granting to the inspectors of adequate powers for enforcing them through judicial action, was only granted later, as the necessity for such powers became evident. In a word, the inspector of factories is primarily a police officer with special duties.

The history of the development of the official inspection of factories and workshops in the United States is like that of most social legislation. One state has led the way by the enactment of tentative measures, which it has afterwards developed as dictated by experience. Other states have profited by the example and have taken similar steps. The moral influence of the action of states on each other in the United States is great. A movement at first grows slowly, but as state after state adopts similar measures the pres-

sure on others to do likewise becomes stronger, and the movement tends to advance at a constantly increasing rate.

In the field of the inspection of factories we are now in the midst of such a movement. Factory inspection in the United States is of comparatively recent development. Though Massachusetts, the first state to take steps in this direction, enacted its initial law for the inspection of factories in 1877, it was not till six years later, or in 1883, that this example was followed by another state—New Jersey. Wisconsin in the same year provided for inspection through a bureau of labor. Ohio followed in the succeeding year, 1884. The movement, once fairly started, however, has spread with increasing rapidity. In 1886 New York provided for factory inspection. In 1887 Connecticut, Minnesota and Maine did likewise. They were followed by Pennsylvania, California and West Virginia in 1889, Missouri and Tennessee in 1891, Illinois and Michigan in 1892, Rhode Island in 1894, Delaware, Indiana, Nebraska and Washington in 1897 and Kansas in 1899. There are, therefore, at the present time, 21 states that have made some provision for factory inspection.

Twenty-one states out of 45 is, of course, a small proportion. As has been stated, however, it is not a complete movement that is being studied. We are rather in the position of one who in the midst of action stops to look back and see what has been accomplished in order better to determine his course for the future. In considering the progress that has been made, moreover, the comparison should be not with the total number of states, but rather with those in which the manufacturing industry is largely developed. It will thus be seen that of the New England and Middle states, all of which are manufacturing states, the smallest states alone—New Hampshire, Vermont and Maryland—have no inspection. In the middle western states, Ohio, Indiana, Illinois, Michigan, Missouri, Minnesota, Kansas, Nebraska and Wisconsin have inspection officers. The western and the southern states, if we except the slight

measure of inspection in Tennessee, West Virginia, California and Washington, are absolutely unrepresented. In these states, however, the manufacturing interests are but little developed.

Finally, it is important to recognize that the growth of factory inspection lies not only in the creation of new departments in different states, but in the enlargement of the powers and the broadening of the scope of the work of inspection services after they have once been initiated. The principal development of factory inspection is found in the development of each particular bureau.

An appreciation of this development, therefore, can only be had by studying the development of factory inspection in each state in which action has been taken, after which the general features of the movement can be summarized.

**MASSACHUSETTS.**—The Commonwealth of Massachusetts holds the preeminent place among the states as regards social legislation. Just as it has been the first to create a bureau of labor statistics, thus setting an example that has been followed by two-thirds of the other states and several foreign governments, the first to establish a state board of arbitration and conciliation, the first to regulate the employment of women and children, etc., so it was the first to provide for the inspection of factories. It would be difficult to overestimate the influence that Massachusetts' labor legislation has exerted on the other states. The imprint of its legislation can be found—frequently verbatim—in the labor legislation of all the other states.

Massachusetts inaugurated its work of factory inspection by the passage, May 11, 1877, of the law entitled "An act relating to the inspection of factories and public buildings." This act is remarkable from the fact that it immediately made broad and efficient provisions for the regulation of labor in factories. It provided for the guarding of belting, shafting, gearing, etc.; the prohibition of the cleaning of machinery when in motion; the ventilation of factories; the protection of elevators, hoistways, etc.; the furnishing of

sufficient means of egress in case of fire, etc. Finally, directed the governor to appoint one or more members of the state detective force to act as inspectors of factories, with the duties of enforcing not only this law, but other legislation relating to the employment of children and the regulation of the hours of labor in manufacturing establishments.

In 1879 this act was slightly amended by an act that abolished the state detective force and created in its stead a district police force, of which two or more members should be designated as inspectors of factories. In accordance with this act the governor appointed three inspectors, and their first report of their work was made in the year 1879. This year, therefore, really marks the beginning of factory inspection in the state.

It will not be practicable to mention all of the acts subsequently passed by which new regulations concerning the conditions of labor were enacted and the duties of the inspectors correspondingly increased. Some of the principal stages of the growth of inspection, can, however, be briefly mentioned.

In 1880 the duties of inspection were extended to mercantile as well as to manufacturing establishments, and the number of inspectors was increased to four.

In 1882 the number of members of the police force detailed for inspection work was increased to five.

In 1885 the district police force was increased to 20, of whom eight were reported in 1886 as detailed for inspection work.

In 1886 an important increase in the duties of the inspectors was made by the act of June 1, entitled "An act relative to reports of accidents in factories and manufacturing establishments." For the first time, therefore, provision was made for the reporting of accidents to laborers.

The year 1887 was prolific in labor legislation. One act was passed to secure proper sanitary provisions in factories and workshops; another to secure their proper ventilation; a third to secure proper meal hours; and another

to amend the law relating to the employment of women and children. The number of inspectors was increased from eight to ten.

By an act of March 8, 1888, a much needed reform was accomplished by dividing the district police force into two separate departments of detective work and inspection. According to this act the inspection department was made to consist of ten members, not including a chief who was also the chief of the detective department. By a supplemental act of the same year the force of inspectors was increased to 20.

March 10, 1890, the law relating to the reporting of accidents was amended so as to make it relate to all proprietors of mercantile and manufacturing establishments, instead of to corporations only, as had been the case under the old law.

In 1891 the force of inspectors was increased to 26, and it was provided that two must be women. An important act of this year was that of May 28, entitled "An act to prevent the manufacture and sale of clothing made in unhealthy places," by which it was attempted to bring under regulation the growing evil of the sweating system. This act was afterwards amended in 1892 and again in 1893.

In 1893 provision was made for the appointment of an additional district police officer, with the duty of inspecting all uninsured steam boilers.

In 1894 the important service was performed of making a codification of all laws relating to labor in factories, the enforcement of which fell within the duties of the inspection department of the district police force.

In 1895 a great increase was made in the inspection duties of the state by the enactment of a law providing for the appointment of four inspectors to examine uninsured steam boilers and to act as a board to determine the competency of engineers and firemen intrusted with the care of such boilers.

The inspection force at the present time consists of one

chief, 26 inspectors of factories (two of whom are women) and four inspectors of boilers.

**NEW JERSEY.**—New Jersey was the first state to follow the example of Massachusetts in making provision for the inspection of factories. Its service was inaugurated by the act of March 5, 1883, entitled "An act to limit the age and employment hours of labor of children, minors and women and to appoint an inspector for the enforcement of the same." By this act the governor was directed to appoint an inspector of factories at a salary of \$1200 a year, whose duties were to inspect all factories, workshops, etc., and to prosecute all violations of law before the proper judicial authorities. He was allowed expenses not to exceed \$500 a year.

In 1884, April 17, a supplemental act was passed providing for the appointment by the governor of two deputy inspectors, at a salary of \$1000 a year each. The salary of the chief inspector was increased to \$1800, and his allowance for contingent expenses to \$1000. At the same time the original act was modified so as to enable infractions of the law to be more effectively prosecuted. The result of this act was to more than double the efficiency of factory inspection in the state.

April 7, 1885, there was passed what was known as the general factory act, which specified in considerable detail the precautions which must be taken in factories against accidents, and unsanitary conditions. The enforcement of this law was intrusted to the factory inspectors.

March 22, 1886, this act was slightly amended.

May 6, 1887, a new general factory act was passed in order to amend and elaborate the act of 1885.

In 1889 the number of deputy inspectors was increased from two to six, and the general factory act was amended especially as regards the provision of fire escapes.

The most important subsequent acts relating to inspection were those of 1893 regulating the sweating system, the enforcement of which was intrusted to the factory inspectors.



and of 1894 imposing on the factory inspectors the duty of mine inspection.

At the present time the inspection force of the state consists of one chief and six deputy inspectors.

OHIO.—Ohio enacted its first law in regard to the inspection of factories April 4, 1884. This act called for the appointment of an "inspector of the sanitary conditions, comfort, and safety of shops and factories," at a salary of \$1500, and traveling expenses not to exceed \$600. The duties of this inspector were very limited indeed. Though he had the power of issuing orders, and non-compliance therewith was deemed a misdemeanor, no provisions were made whereby these infractions could be prosecuted.

In 1885 provision was made by the law for the appointment of three district inspectors.

In 1888 the reporting of all accidents to laborers was made obligatory upon manufacturers.

In 1892 a notable increase was made in the inspection force, by a law providing for the appointment of eight additional district inspectors.

The general factory laws were amended by the acts of March 17, 1892, and April 25, 1893, the purposes of which were to regulate in greater detail the conditions of labor, insure that proper precautions were taken against accidents, etc.

The year 1898, however, was especially prolific in legislation relating to factory labor. No less than eight laws of this character were passed. These laws provided for the regulation of bakeries, for which purpose two additional district inspectors were to be appointed, made obligatory the furnishing of seats and dressing rooms for female employees, ordered that blowers and exhaust fans should be provided to remove dust and other injurious substances, and made other regulations concerning the employment of children, the reporting of accidents, etc.

At the present time Ohio has one chief and 13 district inspectors of factories.

NEW YORK.—New York offers an excellent example of the development of factory inspection in a state, after the initial step had once been taken. The first act relating to factory inspection was passed May 18, 1886, and was entitled "An act to regulate the employment of women and children in manufacturing establishments, and to provide for the appointment of inspectors to enforce the same." By this act provision was made for the appointment of a factory inspector at a salary of \$2000 and an assistant inspector at \$1500 with an allotment of \$2500 for contingent expenses.

The following year the legislature greatly extended the inspection service. By an act of May 25, 1887, it authorized the appointment of eight deputy inspectors at a salary of \$1000 each, and the powers and duties of the inspectors were so increased as to give them a supervision over all of the most important features of factory life. June 15, 1889, the law was again slightly amended.

By an act of May 21, 1890, however, the law was materially changed and made more comprehensive. The most important of the new provisions were those providing for the appointment of eight women as additional factory inspectors, with the same salary as existing deputies, and increasing the allowance for contingent expenses to \$3500, exclusive of traveling expenses.

May 18, 1892, an important extension of the province of factory inspection was made by the act of that date, which attempted to bring under regulation the sweating system. Advantage was also taken of the opportunity to collect in a single act most if not all of the laws relating to factories and their inspection. In a way there was created a factory code. The force of inspectors was maintained at the same number, viz., one inspector, one assistant inspector and 16 deputies. Salaries, however, were considerably increased, that of the chief inspector being raised to \$3000, that of the assistant to \$2500, and that of the deputies to \$1200 each. Provision was also made for a suboffice in New York city.

In 1893 the law was still further amended by the act of

March 22, and made more stringent in its provisions. From the standpoint of inspection the greatest change was that whereby provision was made for eight additional deputy inspectors, of whom two should be women.

The final step in the evolution of a regular labor code was taken in 1897 when by the law of May 13 all the labor laws, whether relating to factory inspection, arbitration, employment bureaus or other matters, were consolidated in a single law. More or less important changes were at the same time made in a number of laws. The most important with which we are here concerned provided that the number of deputy inspectors should be increased to 36, of whom ten might be women. Six of them should be especially detailed to inspect bakeries and enforce provisions regarding them, and one to act as a mine inspector.

CONNECTICUT.—The state of Connecticut created its service for the inspection of factories in 1887. The act provided for the appointment of an inspector to visit factories and see that proper precautions were taken against accidents, and proper sanitary regulations observed. This law has remained practically unchanged till the present time, and provides for a system of factory inspection which is far from efficient. Though Connecticut has on its statute books laws relating to the employment of women and children, the provision of proper fire escapes, etc., their enforcement does not seem to be intrusted to the factory inspector. There is also no provision calling for the reporting of accidents in factories. The orders of the inspector consist almost entirely of directions concerning the guarding of machinery or the observance of proper sanitary measures.

The only extension of this law that has been made in the succeeding decade was by the law of May 25, 1897, which provided for the rigid inspection of all bakeries by the factory inspector. It is made the duty of this officer to see that all bakeries are "properly drained, plumbed, ventilated and kept in a clean and sanitary condition and constructed with proper regard to the health of the operatives and the

production of wholesome food" and also to enforce certain other regulations concerning separate sleeping rooms for operatives, dressing rooms, etc.

There is at the present time but one inspector, though appropriation is made for the appointment of special agents as assistant inspectors. Though the law providing for factory inspection was passed in 1887, the first report seems to have been made for the year 1889.

PENNSYLVANIA.—Though Pennsylvania is one of the most important manufacturing states of the Union, the creation of a service of factory inspection is of comparatively recent date. The first step in this direction was taken by the act of May 20, 1889, entitled "An act to regulate the employment and provide for the safety of women and children in mercantile and manufacturing establishments, and to provide for the appointment of inspectors to enforce the same and other acts providing for the safety or regulation of the employment of said persons."

Though its action was considerably delayed, Pennsylvania by this act immediately created an efficient inspection service. The act provided for the appointment of an inspector of factories at a salary of \$1500 a year, and six deputy inspectors, three of whom should be women, at a salary of \$1000 a year. The inspectors were given broad powers to order necessary changes and to enforce them through prosecutions before the proper judicial officers. Although the bureau of industrial statistics exercised no supervision over the factory inspector, the latter was required to report to the chief of that bureau, and his early reports, therefore, are included in the reports of that office.

On June 3, 1893, a new act was passed, bearing the same title as the act of 1889 and replacing the latter, which practically doubled the efficiency of the inspection service. The number of deputy inspectors was increased from five to nine, five of whom should be women, and their salaries were raised to \$1200. The salary of the chief inspector was at the same time raised from \$1500 to \$3000. The inspector was al

required to report directly to the governor. His reports, commencing with that for 1893, have therefore appeared as separate volumes.

In 1895 the duties of the inspectors of factories were still further increased by the act of April 11, which was directed to the regulation of the sweating system in the clothing and tobacco industries. In order to provide for the increased work that would thus have to be done, the number of deputy inspectors was increased from 12 to 20.

April 29, 1897, a law was passed amending in important respects the existing law regarding the employment of women and children. The provisions of the existing law were extended so as to embrace mercantile establishments, laundries, printing offices, etc.; other sections required the provision of seats for female employees, and the use of mechanical belt and gear shifters, and regulated the lighting and heating of factories and the inspection of boilers.

By two other acts of the same year, passed May 5 and May 27, respectively, the laws regarding the sweating system and the inspection of bakeries were made more rigid and effective.

Finally, by the law first mentioned, the chief inspector was provided with a chief clerk, an assistant clerk and a messenger. The inspection department at the present time, in addition to this office force, consists of 21 persons, a chief and 20 deputy inspectors.

ILLINOIS.—The state of Illinois created an inspection service by the act of June 17, 1893. The immediate cause leading to its establishment was the desire to abolish the manufacture of clothing in tenements, or the so-called sweating system. The act, however, not only contained provisions to this effect, but regulated the employment of women and children generally, and authorized the appointment of an inspector at a salary of \$1500 a year, an assistant inspector at \$1000, and ten deputies, five of whom must be women, at \$750 each. Power was given to them to enforce their orders through judicial prosecution.

A comprehensive inspection service, however, was by means created, as the duties of the inspectors were strictly limited to enforcing the provisions of the act by which they were authorized, and therefore embraced little but the regulation of the sweating system and the employment of women and children. In 1897 a number of laws were enacted materially extending the system. The law of May 27 made obligatory the provision of fire escapes as required by the factory inspectors. The law of June 9 extended the law regulating the employment of children so as to include every gainful occupation, and it was broadly stated that no child under 14 years of age should be employed for wages in mercantile establishments, laundries, offices, or any such place; and the law of June 11 made detailed provisions concerning the use of blowers and fans to remove dirt and other substances injurious to the health of employees.

**RHODE ISLAND.**—The state of Rhode Island provided for the inspection of factories by the act of April 26, 1894. This act created at once a very efficient system of factory inspection. It not only provided for the appointment of two inspectors, one of whom must be a woman; but regulated the employment of children; directed that all elevators or hoists and way entrances should be guarded; that no person under 14 years of age should clean machinery while in motion; that machinery should be guarded; that separate toilet facilities should be provided for female and male employees; that accidents should be promptly reported; and, generally, that the inspector should issue all needful orders to secure the proper heating, lighting, ventilation or sanitary arrangements of factories and workshops.

Power was given to the inspectors, moreover, to enforce their orders by prosecuting delinquents before the proper courts or magistrates.

**MAINE.**—An inspection service was first organized in Maine by the act of March 17, 1887, entitled "An act to regulate the hours of labor and the employment of women and children in manufacturing and mechanical establish-

ments." This act provided for the appointment of a deputy commissioner of labor at a salary of \$1000 per annum, and specified his duties to be "to inquire into any violations of this act, and also to assist in the collection of statistics and other information which may be required for the use of the bureau of industrial and labor statistics." The appointment of assistant deputies, if needed, at a salary of \$2 a day was also authorized.

It will be seen that no really effective system of inspection was provided by this act. The powers of the deputy were strictly limited to those of inspection and report. The means of enforcing his orders, without which inspection has little reason, were absolutely wanting. In 1893 the title of "deputy commissioner of labor" was changed to that of "inspector of factories, workshops, mines and quarries," a change chiefly significant as showing that the true nature of the office was becoming better understood.

By an act of the legislature, March 29, of the same year, it was made the duty of the inspector to examine as to the extent to which the law in regard to doors swinging outward was complied with, and as to the sanitary condition of factories, workshops, mines and quarries, and to report annually to the governor. It was under the provisions of this law that the first report of the factory inspector was issued in 1893. These reports are incorporated in the reports of the bureau of industrial and labor statistics. Though the law states that it is the duty of the inspector to enforce certain laws, there is no way specified by which this shall be done, and the reports of the inspector do not indicate that he ever ordered any changes to be made, or attempted any prosecutions in order to enforce labor laws.

INDIANA.—No provision for the inspection of factories in Indiana was made till the passage of the law of March 2, 1897. This law was a very comprehensive enactment. It provided for the more efficient regulation of the employment of women and children, contained provisions for the regulation of the sweating system, and finally created the offices

of inspector and assistant inspector of factories. The duties of these officers, which were to enforce the labor laws of the state, comprehended the enforcement of laws relating to the employment of women and children, the guarding of machinery, the lime washing of factories, the provision of fire escapes, the reporting of accidents, and numerous other obligations imposed on factory owners.

Though one of the latest states to take action, Indiana has by this law provided one of the most effective factory codes of any of the states.

MICHIGAN.—The first bill to provide for factory inspection in Michigan was introduced in the state legislature in 1891 but failed to pass. In 1893 another bill was introduced, passed and went into effect August 25, 1893. The bill as introduced, contemplated a separate bureau. As passed, it provided that factory inspection should be a part of the work of the bureau of labor and industrial statistics. The title of this act was "An act to regulate the employment of women and children in manufacturing establishments in the state, to provide for the inspection and regulation of such manufacturing establishments, and to provide for the enforcement of such regulation and inspection."

This act provided for the annual inspection of manufacturing establishments by the commissioner or deputy commissioner of labor, or by persons acting under their authority, for the payment of which \$4000 should be annually appropriated. In addition to creating an inspection service it also embraces a great many provisions of a general factory act. It thus makes it the duty of the inspectors to see that proper safeguards are taken against accidents; that factories are provided with fire escapes; that suitable toilet facilities are provided for male and female employees in different rooms; that exhaust fans are provided where necessary; and most important of all, to enforce their orders by the prosecution of delinquents in the courts of competent jurisdiction.

Michigan thus provided for an efficient system of factory



inspection as far as the powers and duties of the inspectors were concerned. The appropriation of only \$4000 a year for this work was, however, far from sufficient to carry out the work, and the mistake was made of making inspection a branch of the bureau of labor instead of an independent service.

For the first year four inspectors were appointed, and for the second year five inspectors. In 1895 the act was amended by raising the appropriation for inspection from \$4000 to \$8000 a year. No limit was placed on the number of deputies that might be appointed save by the amount of the appropriation.

Further amendments were made in 1897 by the laws of April 24, May 17 and June 2. By these acts the annual appropriation for factory inspection was increased to \$12,000 and it was ordered that all manufacturing establishments should be inspected at least once in each year; the law relating to child labor was amended; the minimum age at which children could be employed being placed at 14 years; and the provision of safety appliances for all elevators was made obligatory.

MISSOURI.—By act of May 19, 1879, Missouri created a "bureau of labor statistics and inspection of factories, mines, and workshops." In spite of its title, however, this bureau by no means constituted a bureau of inspection. An examination of the reports of the bureau shows that its efforts have been almost wholly directed to securing information, and not to inspection with the view of enforcing particular laws.

On April 20, 1891, an act was passed which made a considerable number of technical provisions concerning the provision of safeguards against machinery; the guarding of elevator shafts; the reporting of accidents; the provision of fire escapes, etc. This act, however, was made to apply only to cities and towns with a population of 5000 or over, on which it was made obligatory to appoint an inspector with deputies to inspect all factories employing ten or more

persons and to see that the provisions of the act were complied with. These inspectors were directed to report semi-annually to the commissioner of labor.

It would be difficult to conceive of a system less likely to be productive of valuable results than this localization of the work of inspection and distribution of authority. In fact, the commissioner of labor has reported during the succeeding years that the law has been ignored by a great majority of the state. As yet, therefore, Missouri can not be said to possess any very effective system of factory inspection.

**WISCONSIN.**—In Wisconsin the law of April 12, 1885, providing for the creation of a labor bureau, made it a part of the duties of the commissioner of labor to inspect factories and to see that the laws regarding fire escapes, the protection of employees against accidents, the employment of women and children, etc., were complied with, and to enforce the same by prosecutions before the courts. It was manifestly beyond the power of the commissioner to do more than slightly fulfil these duties.

April 4, 1885, the labor bureau was reorganized, and among other changes provision was made for the appointment of a special inspector of factories as one of the officers of the bureau. At the same time the laws relating to the conduct of labor in factories were considerably elaborated and made more stringent. This law thus provided for a fairly complete system of factory inspection, though but a single inspector was provided for, and he was made an officer of the labor bureau instead of an independent official.

The first report of inspection was made for the years 1885 and 1886, and is included in the biennial report of the commissioner of labor. Subsequent reports have appeared in the same way.

In 1887 the inspection laws were enlarged; authority was granted to appoint two inspectors instead of one, and the great defect of prior legislation was remedied by attaching penalties for the violation of the factory acts and increasing

the powers of the inspectors to enforce their orders and prosecute offenders.

Since this date other acts slightly amending the factory acts have been passed, but the inspection service remains as it was then.

MINNESOTA.—The act of 1887 creating a bureau of labor statistics in Minnesota specifies as a part of the duties of the commissioner that he shall cause to be inspected the factories and workshops of the state, "to see that all laws regulating the employment of children and women and all laws established for the protection of the health and lives of operatives in workshops, factories, and all other places where labor is employed are enforced." In case his orders are not complied with, he is directed to make formal complaint to the county attorney, which officer must then proceed to the prosecution of the offender.

The first material change in this law was made in 1893. This act, while leaving inspection a part of the duties of the labor bureau provided for the appointment of a special inspector of factories and two deputy inspectors. The duties of these officers broadly stated are "to cause to be enforced all laws regulating the employment of children, minors, and women; all laws established for the protection of the health, lives, and limbs of operatives in workshops and factories, on railroads and in other places, and all laws enacted for the protection of the working classes."

The reports of these inspectors are contained in the biennial reports of the commissioner of labor, the first inspection report being that for the years 1893 and 1894.

DELAWARE.—The state of Delaware inaugurated a factory inspection service by a law enacted May 10, 1897. This law had special reference to the regulation of the employment of women, and referred only to the incorporated towns and cities of the county of New Castle, or the county in which the only two important cities of the state, Wilmington and Newark, are situated. This law requires that wherever ten or more women are employed there must be provided a

separate room in which the women can dress, wash and lunch, separate water closets for the two sexes, and that seats for females must be furnished. Finally, provision is made for the appointment of a female inspector by the chief justice of the state to enforce the provisions of the act. She is required to report annually to the chief justice. Her salary is but \$300.

NEBRASKA.—The law of March 31, 1887, creating a bureau of labor in Nebraska, provided that it should be a part of the duty of the commissioner of that bureau to visit industrial establishments and see that the laws in respect to child labor, hours of labor for women and children, fire escapes, and similar enactments were enforced. As no provision for deputy inspectors was made, no effort to carry out a system of the inspection of factories was ever attempted.

WASHINGTON.—The legislation of the state of Washington is similar to that of Nebraska. By the law of March 3, 1897, provision was made for the appointment of a commissioner and an assistant commissioner of labor to act as "factory, mill and railroad inspector." These officers were given the duties, among others, of enforcing the laws relating to the employment of women and children and having for their purpose the protection of the lives and health of employees. It is doubtful if any effective system of factory inspection can be created under this law.

TENNESSEE.—Such a slight measure of factory inspection has been provided for in Tennessee that the barest mention will be sufficient. The act of March 21, 1891, creating the bureau of labor and mining statistics, also makes it the duty of the commissioner to inspect factories and workshops. As the power of the commissioner is limited to investigation, and his time is so largely taken up with his other duties, practically nothing is accomplished in the way of real factory inspection work.

CALIFORNIA.—In California provision for a measure of factory inspection was made by a law passed in 1889. This

law made it obligatory on factory owners to keep their establishments in a clean and hygienic condition, to guard against the formation of dust, to provide seats for females where practicable, etc. Another law passed in the same year regulated the employment of children. The enforcement of both of these laws was made a part of the duties of the commissioner of labor, and to that extent this officer serves as a factory inspector, though there seems to be no express provision of law requiring him to visit industrial establishments.

WEST VIRGINIA.—The act of 1889 creating a state bureau of labor in West Virginia provided that the commissioner of labor should "once at least in each year visit and inspect the principal factories and workshops of the state, and shall on complaint or request of any three or more reputable citizens, visit and inspect any place where labor is employed, and make true report of the result of his inspection." He is then directed to report any infraction of the law that he may discover to the state's attorney for prosecution. As this law, however, contains absolutely no provisions regulating labor, and there are no other laws of this character in the state, it would seem that the commissioner has, properly speaking, no duties under this law, and the state consequently no effective system of factory inspection.

KANSAS.—In 1899 Kansas reorganized her bureau of labor. The chief of this bureau is styled both commissioner of labor and state inspector of factories, and, as these two designations indicate, has the twofold duty of collecting statistics of labor and inspecting factories. He is directed to enforce all the labor laws of the state.

In the foregoing history of the organization of factory inspection in the individual states, special attention has been given to the kind of administrative organization that has in each case been selected. This is one of the most important considerations involved in the question of factory inspection, for on it depends to a large extent the effectiveness of the system that has been adopted. Eleven of these states

—Maine, Michigan, Missouri, Minnesota, Wisconsin, Nebraska, Washington, California, West Virginia, Kansas and Tennessee—have connected the duty of inspection with the bureau of labor statistics. The adoption of this policy is in every way regrettable. An inspection service, to accomplish the best results, should be absolutely independent of all other work.

The function of the factory inspector is to see that certain laws relating to the conduct of labor in factories are enforced, and to do this he should possess a certain technical knowledge, such as that relating to machinery, hygiene, ventilation, construction of buildings, etc. The duties of the commissioner of labor are to collect facts and present them properly. The greatest objection to joining the two offices, however, is not that it is difficult to find a man with the mental equipment for them both, but that the two classes of duties are largely antagonistic. The labor commissioner has to depend on the good will of the employers for his information, while the inspector has frequently to oppose the latter's wishes.

The advisability of an independent inspection service can not be shown better than by reproducing the remarks of the chief factory inspector of New York concerning the proposition to combine the three services of the bureau of labor statistics, the board of arbitration and office of factory inspection.

Such a plan, if carried out, would be to the detriment of the work of factory inspection. The duties of a factory inspector are of a police nature. He must see that certain provisions and restrictions of law are obeyed; that children of certain ages must not be employed; that guards must be attached to dangerous machines; that women and children shall not work during certain hours; that unsafe buildings must be made secure, and a score of other matters, concerning all of which he must exercise the compulsory arbitrary powers of the state. In case of refusal to comply with his orders, it devolves upon him to swear out warrants for the arrest of the delinquent persons and prosecute them to the full extent of the law. These duties, which are only briefly outlined, are not compatible with the work of gathering statistics and arbitrating differences between employers and employed,

especially as the work of factory inspection may oftentimes bring him into contact, if not into conflict, with the very persons to whom appeals must be made for reliable statistics or on whose sense of fairness must rest the conciliatory policy of arbitrating wage or other difficulties in labor controversies . . . It will thus be seen that the duties of the commissioners of statistics and arbitration and those of the factory inspector are in no way harmonious and are in many respects antagonistic and dissimilar.

Experience has more than demonstrated the correctness of this reasoning. In those states in which factory inspection has been joined to the bureau of labor relatively slight results have been accomplished, and one might almost say that a real system of factory inspection exists only in the 10 states of Massachusetts, New Jersey, Ohio, New York, Illinois, Connecticut, Pennsylvania, Indiana, Michigan and Rhode Island, which have independent inspection services.

We now turn to a consideration of the character of the work that has been assigned to factory inspectors; in other words, to their duties and powers. In the historical sketch of the development of factory inspection no attempt was made to state all of the duties that were placed on factory inspectors in each state. Only such were specified as tended to show the growth of the service in each state. In the following table the attempt has been made, after a careful examination of the laws relating to factory inspection, or laws the enforcement of which is intrusted to state officials, to present in a concise form the duties of inspectors in each of the twenty states. The adoption of this method of presentation makes it possible to compare at a glance the extent of the services in the different states. This table, of course, only indicates the extent of the duties of inspection, but throws no light on the efficiency with which they are performed. Thus a state that has enumerated but a few duties may provide for an adequate force of inspectors and really accomplish more valuable results than another state with an elaborate inspection law, but inadequate provisions for its enforcement.

## DUTIES OF FACTORY INSPECTORS IN THE UNITED STATES.

Duty of inspectors to enforce laws concerning—	Maine.	Massachusetts.	Rhode Island.	Connecticut.	New York.	New Jersey.	Pennsylvania.	Delaware.	Ohio.	Indiana.	Illinois.	Michigan.	Wisconsin.	Minnesota.	Missouri.	Nebraska.	Tennessee.	Washington.	Kansas.	California.
Employment of children .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Employment of women .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Payment of wages .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Lunch hour—women and children .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Seats for females .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Separate toilet facilities for the two sexes .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Guarding machinery .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Cleaning machinery in motion by children and women.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Mechanical belt and gearing shifters .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Communication with engineer's room .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Guarding vats containing molten metal or hot liquids..	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Railings on stairways .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Regulation of dangerous or injurious occupations .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Use of explosive or inflammable material .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Exhaust fans, blowers, etc., for removal of dust, &c. ....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Guarding elevator and hoistway openings .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Fire escapes .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Doors to swing outward, to be unlocked .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Sanitary condition .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Ventilation .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Lighting .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Heating .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Overcrowding .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Lime washing or paint'g walls	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Reporting accidents .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Regulat'n of sweating system	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Inspection of mercantile establishments .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Inspection of mines .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Inspection of steam boilers ...	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Inspection of school houses, theaters, etc. ....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Regulation of bakeries .....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Approval of plans for factories	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

This table does not pretend to show absolutely all the duties of factory inspectors. Frequently the laws are so



generally worded that it is largely left to the discretion of inspectors to determine whether the conditions under which factory employees labor are sanitary and proper precautions are taken against danger. It does show, however, the extent to which the states have specified certain regulations that must be observed, and consequently the features in which it is believed factory inspection should be confined. The states having provisions concerning the subjects shown in the first column are indicated by a dash. It is believed that this table gives a very approximate idea of the scope of the duties of factory inspectors in the United States.

An examination of this table shows in the clearest way the character of factory inspection as practised in the United States. It is at once evident how largely legislation in one state affects legislation in the others. A state enacting new laws frequently but copies the legislation of the other states. As regards the duties of inspectors, it will be seen that they may be divided into a number of quite distinct classes. First, there is the enforcement of certain general labor laws relating to the employment of women and children, the provision of seats for females, and of separate toilet facilities for the two sexes, the payment of wages in cash and at intervals of certain frequency, and the allowance of an adequate length of time to women and children at noon for their lunch.

A second class of duties is that relating to the provision of suitable means of egress in case of fire. This finds expression in the requirement that fire escapes shall be placed in factories, and that doors shall be so hung as to open outward and shall be kept unlocked during working hours. A third and most important class is that relating to the obligation of factory operators to take all needful precautions to protect workmen against accidents. This is done by requiring that machinery and vats containing molten metal or hot liquids must be properly guarded; that machinery in motion must not be cleaned by women or

minors; that mechanical belt and gear shifters be provided; that a speaking tube or some other means of communication be provided between any room where machinery is used and the engineer's room; that elevators be provided with safety appliances and that they and all hoistway openings be properly railed off; that sides or railings be placed on all stairways; that there be exhaust fans to prevent dust or other deleterious products from being inhaled by the operatives; that no use be made of explosive or highly inflammable compounds except under special precautions; and, finally, that exceptional precautions, the determination of which lies largely in the discretion of the inspectors, be taken in the case of all dangerous or injurious occupations.

Fourth, there are the general provisions relating to the sanitary condition, ventilation, lighting, heating and overcrowding of factories. Under sanitation it is usual to specify that water closets, privies and drains shall be tight and kept in good condition. A few states, it will be seen, require walls to be lime washed or painted once a year.

Fifth, there is the duty of inspectors to keep a record of all accidents to employees of factories, and to report annually concerning them. This information is obtained through the obligation placed by law on all employers of labor to report all accidents to the inspection department. There are few who are interested in, or concerned with, the inspection of factories who fail to recognize the utility of obtaining as nearly complete data as possible concerning the occurrence of accidents to laborers, their cause, character, etc. Such information is desirable, first of all, in order to determine which are the industries and the particular manipulations or machines that are responsible for accidents. It is thus possible to determine what steps should be taken for lessening their frequency. Secondly, it is necessary in order that the public and law-makers may be made to realize the importance of requiring the provision of safety appliances and of the rigid enforcement of precautionary regulations.

The collection of this information, if it is to be made, naturally falls within the province of the factory inspectors. It is much to be regretted, therefore, that these officers for the most part either have not been given the power to obtain this information or have not organized their inquiries on a sufficiently broad basis. Though nine states, as will be seen by the table, provide in their factory laws that accidents shall be reported by manufacturers, in none of them is there any pretense that anything like complete returns of accidents are obtained. Even in the cases of the accidents that are reported, the description of their causes, results and character is far from sufficiently full. The laws directing the reporting of accidents usually read that the employers of labor shall report to the chief factory inspector all accidents causing the death of an employee or his incapacity to work for a certain duration of time. It is also to be regretted that no uniformity exists in such data in the different states as regards the classification of accidents either by causes, extent of injury, or party at fault. The very important classification of accidents into those causing death, permanent total, permanent partial, and temporary disability is in no case made.

Any attempt to make a study of accidents to labor in factories in the United States is, therefore, out of the question. The only point for congratulation is that the necessity for reporting accidents has been recognized by a number of states, and that thus a beginning has been made that may receive a fuller development in the future.

Within recent years the office of inspector of factories has become of increased importance through the development of the so-called "sweating system," and the attempt to control or abolish it through legislative enactments. Wherever laws have been enacted for this purpose their enforcement through the factory inspectors of the state has constituted an essential feature of the law. In these states, therefore, the regulation of this system of work has become one of the most important duties of the factory inspectors.

The above classes constitute the regular and ordinary duties of factory inspectors. There has been a tendency, however, to impose on these officers certain additional duties which can be and frequently are intrusted to other officers; such, for instance, are the inspection of mines, the inspection of steam boilers, the inspection of schoolhouses, theaters and other public buildings.

Finally, in recent years, a number of states have passed special regulations concerning the conduct of the bread-making business. These provisions are that such work shall not be carried on in cellars; that workrooms shall not be used as sleeping rooms; that privies and water closets shall not be maintained within a certain distance of the bakeries, etc.

Of the states, Massachusetts not only possesses the most advanced and detailed code of labor laws, but has made the most efficient provision for their enforcement. No better method can, therefore, be adopted for showing the character of factory inspection in the United States, where it is best developed, than to reproduce the summary of the duties of the inspectors of this state, as recapitulated by the chief factory inspector in his report for the year 1895. There is all the more excuse for reproducing the duties of the inspectors of this state, since it is to its laws that all of the states turn when contemplating similar legislation. On page five of this report the chief inspector says:

There are now 26 officers exclusively employed in the inspection department. Some idea of the extent and nature of the duties of the inspectors may be had by reference to the statutes defining them; but not even the detailed reports of the several inspectors made to this office can give, to those not familiar with the matters discussed, an adequate idea of the vast amount of labor performed by this department. Its duties embrace the enforcement of the laws relating to the hours of labor; the protection of operatives from unguarded machinery; the employment of women and minors; the schooling of children employed in factories and workshops; the preservation of the health of females employed in mechanical manufacturing, and mercantile establishments; reports of accidents in manufactories; safety appliances for elevators; provisions for escape from hotels and other buildings in case of fire; proper ventilation

for factories and workshops, and uniform meal hours for children, young persons, and women employed therein; the suppression of nuisances from drains, and provisions for water closets, etc., for the use of each sex employed in factories and workshops, and various other sanitary regulations; the inspection of buildings alleged to be unsafe or dangerous to life or limb, in case of fire or otherwise; the submission to the inspector for approval of a copy of plans and specifications of any building designed for certain public purposes, as factory, workshop, mercantile structure, hotels, apartment houses, lodging or tenement houses, above a certain height; communication between the engineer's room and each room where machinery is run by steam, in every manufacturing establishment; proper safeguards at hatchways, elevator openings, and well holes in public buildings, factories, and mercantile establishments; forbidding the use of portable seats in isles or passageways in public halls, theaters, schoolhouses, churches, and public buildings during any service held therein; requiring fire-resisting curtains, approved by inspectors, for use in all theaters, etc.; competent watchmen, lights in hotels, gongs or other proper alarms, and notices posted describing means of escape from fire in boarding and lodging houses above a certain size, family and public hotels; fire escapes on tenement or lodging houses three or more stories in height; prohibiting during working hours the locking of any inside or outside doors of any building where operatives are employed; public buildings and schools in respect to cleanliness, suitable ventilation, and sanitary conveniences; the weekly payment of wages by certain corporations to each of their employees; the inspection of uninsured steam boilers; the examination as to the competency of engineers and firemen in charge thereof; the enforcement of the act relating to the manufacture and sale of clothing made in unhealthy places; the enforcement of the act relating to the heating of street-railway cars, and the enforcement of the act requiring specifications to be furnished to persons employed in cotton, worsted, and woolen factories.

It is not necessary at this date, even were this the place, to attempt to show the necessity for, or all the advantages resulting from factory inspection. Some of the most important of these latter, however, will bear mention. If it is desirable to have factory and labor laws, it is certainly desirable to have them enforced, and experience has demonstrated that without inspection many labor laws will remain dead letters. But apart from performing the duties for which they are created, they indirectly perform many other services. Many of the inspectors of factories report that they have been of considerable use in spreading information

concerning the best mechanical devices for guarding against accidents. In the performance of their duties they become acquainted with the best contrivances, and are able to suggest their employment in factories inefficiently equipped. The directors of these latter are often only too thankful to have them called to their attention. The reports of the inspectors, moreover, are becoming more and more valuable as repositories of information concerning labor conditions of a character that can not be obtained elsewhere. They contain descriptions, accompanied by illustrations and plans of the best devices for guarding machinery, of protecting elevators and shaft openings, of carrying away dust and odors by the use of exhaust fans, of the best forms of fire escapes, of plans for ventilating and heating factories, schoolhouses and other buildings, etc. The practical contact of inspectors with labor conditions enables them to determine with special accuracy the results of labor legislation, and to recommend with authority its amendment or elaboration.

In concluding this account of the inspection of factories and workshops in the United States, some mention should be made of the international association of factory inspectors. This organization though created as the result of private efforts, yet may be said to have an official standing. It was created and held its first annual convention in 1887. The object of the association is to bring together annually all officers of the government in the United States and Canada whose duties relate to the inspection of factories, workshops and public buildings. It is scarcely necessary to comment on the utility of such a gathering. The majority of the inspectors are new and inexperienced in their duties. They can thus avail themselves of the experience of the older inspectors, especially can the very desirable object of rendering more uniform the legislation and practices of the states be advanced. The report of the proceedings and the papers read at the conventions are not only separately published, but are frequently included as appendices to the reports of individual states.

## CHAPTER IV.

### REGULATION OF THE SWEATING SYSTEM.

Though the regulation of the sweating system, so far as it is attempted by any of the states, usually falls upon the factory inspection service, and should, therefore, logically be considered in connection with that subject, yet the problem is such a special one, and the legislation in respect to it is so distinct from the body of general factory laws, that it is deemed best to consider it under a separate caption.

At the present time eight states, Massachusetts, Ohio, New Jersey, Illinois, Pennsylvania, New York, Indiana and Maryland have enacted special legislation in relation to the sweating system. These states include the great cities of New York, Brooklyn, Jersey City, Boston, Philadelphia, Baltimore, Chicago, Indianapolis and Cincinnati, or practically all of the chief centers of the sweating system.

Massachusetts, always the pioneer in social legislation, was the first state to awake to the necessity of taking action for the lessening of the evils of the sweating system. In 1890 the governor ordered an investigation of the sweating system in the state. The result of this inquiry was to show such a condition of affairs that immediately on its report a law bearing date May 28, 1891, was passed, having for its purpose the regulation of the system. This act provided that any place in which clothing was manufactured by other than the immediate members of a family should be considered a factory and therefore subject to all the rules and regulations embodied in the factory inspection acts. The proprietor of every such shop was required to notify the inspection department that he was carrying on such work, and two extra inspectors were provided for with the special

duty of inspecting these places. It was further provided that all clothing made under these conditions should bear label showing the name of the state and city in which it was made. This provision was directed against the tenement-made goods imported into the state from New York.

The enforcement of this law was productive of good results, but experience showed that it could be improved in number of respects. The law was therefore amended in 1892, 1894 and again in 1898. The chief change introduced was that whereby work performed by single families was brought under legal regulation. As the law as it now stands is typical of the legislation in other states its provisions are reproduced verbatim:

No room in any tenement or dwelling house shall be used for the purpose of making, altering, repairing or finishing therein any coats, vests, trousers or wearing apparel of any description whatsoever, except by the members of the family dwelling therein, and any family desiring to do the work of making, altering, repairing or finishing any coats, vests, trousers or wearing apparel of any description whatsoever in any room or apartment in any tenement or dwelling house shall first procure a license, approved by the chief of the district police, to do such work as aforesaid. A license may be applied for by and issued to any one member of any family to do such work. No person, partnership or corporation, shall hire, employ, or contract with any member of a family not holding a license therefor, to make, alter, repair or finish any garments or articles of wearing apparel as aforesaid, in any room or apartment in any tenement or dwelling house as aforesaid. Every room or apartment in which any garments or articles of wearing apparel are made, altered, repaired or finished, shall be kept in a clean condition and shall be subject to the inspection and examination of the inspectors of the district police for the purpose of ascertaining whether said garments or articles of wearing apparel or any part or parts thereof are clean and free from vermin and every matter of an infectious or contagious nature. A room or apartment in any tenement or dwelling house which is not used for sleeping or living purposes, and which is not connected with any room or apartment used for living or sleeping purposes, and which has a separate or distinct entrance from the outside, shall not be subject to the provisions of this act. Nor shall anything in this act be so construed as to prevent the employment of a tailor or seamstress by any person or family for the making of wearing apparel for such person's or family's use.

If said inspector finds evidence of infectious disease present in



any workshop or in any room or apartment in any tenement or dwelling house in which any garments or articles of wearing apparel are made, altered or repaired, or in goods manufactured in the process of manufacture therein, he shall report the same to the chief of the district police, who shall then notify the local board of health to examine said workshop or any room or apartment in any tenement or dwelling house in which any garments or articles of wearing apparel are made, altered or repaired, and the materials used therein; and if the said board shall find said workshop or tenement or dwelling house in an unhealthy condition, or the clothing and materials used therein unfit for use, said board shall issue such order or orders as the public safety may require.

Whenever it is reported to said inspector, or to the chief of the district police, or to the state board of health, or to either of them, that ready made coats, vests, trousers, overcoats or other garments are being shipped to this commonwealth, having previously been manufactured in whole or in part under unhealthy conditions, said inspector shall examine said goods and the condition of their manufacture, and if upon such examination said goods or any of them are found to contain vermin or to have been made in improper places, or under unhealthy conditions, he shall make report thereof to the state board of health, which board shall therefore make such order or orders as the public safety may require.

Whoever sells or exposes for sale any coats, vests, trousers or any wearing apparel of any description whatsoever which have been made in a tenement or dwelling house in which the family dwelling therein has not procured a license, as specified in section 1 of this act, shall have affixed to each of said garments a tag or label not less than two inches in length and one inch in width, upon which shall be legibly printed or written the words "tenement made" and the name of the state and the town or city where said garment or garments were made.

No person shall sell or expose for sale any of said garments without a tag or label as aforesaid affixed thereto, nor sell or expose for sale any of said garments with a false or fraudulent label, nor willfully remove, alter or destroy any such tag or label, upon any said garments when exposed for sale.

Whoever violates any of the provisions of this act relating to the manufacture and sale of clothing made in unhealthy places shall be punished by a fine not exceeding \$200 or by imprisonment in the county jail not exceeding six months.

An examination of this law—and the laws of the other states are very similar—shows the way in which the government has attempted to control the evils of the sweating system. It will be noticed in the first place that a clear distinction is made between tenement *shop* work and tene-

ment *family* work. It is rightly felt that the right of family to do as it pleases with its rooms as regards working in sleeping rooms shall not be interfered with. The law therefore declares that all places in which clothing is manufactured other than by the members of the same family shall be a factory and must correspond to factory regulations as regards sanitation, lighting, etc. Work in private families, however, is subjected to regulation by the provisions that they must first obtain a license or permit from the chief factory inspector, which license will not be granted unless their rooms are in a cleanly condition.

Great prominence, it will be observed, is given to the idea of considering this question from the standpoint of the public health. In many respects the most important feature of the act is that requiring goods made in tenement houses, that is, in houses used also as sleeping places, to be plainly marked "tenement made." The purpose of this is evident. No one desires to purchase clothing that he knows has been made in dirty, unhealthy tenements. It is believed, therefore, that the enforcement of this provision will compel manufacturers to see that their garments are made under other conditions. The additional requirement that they shall be marked with the name of the state and city in which they were made is directed against New York tenement made goods being sold in the state. It is important to observe that every effort is made to hold not only the sweater and the family responsible for the observance of this law, but the manufacturers and merchants as well. Experience has shown that it is exceedingly difficult to prosecute the former, while the latter can be easily reached. The latter, moreover, are really the responsible parties.

In New York the factory inspector first called specific attention to the need of regulating the sweating system in his report for 1888. In 1891 special attention was again given to the subject. The result was the passage of the law of May 18, 1892. This law was very materially amended and strengthened in the following year and again

1896, 1897 and 1899. The law as it now stands, while following the general scheme of the Massachusetts law, differs from it in several important particulars. The purpose of these differences is to make the regulation of the sweating system still more rigid and effective.

In the first place, the law relates to not only the manufacture of wearing apparel of all kinds, but of cigars, cigarettes, artificial flowers, feathers, purses, furs, hats, caps, suspenders, etc. The manufacture of these articles is absolutely prohibited in any tenement or dwelling house, or in any rear building in the rear of a tenement or dwelling house, whether itself used as a dwelling or not, unless a permit from the factory inspector has been obtained, and the permit must state the maximum number of persons that may be employed. A matter of great importance is that provision which requires every person or firm giving out work to be done, to keep a record open for inspection of the names and addresses of all persons to whom the work is sent to be made. The manufacturers can no longer say that they do not know who does their work or under what conditions it is performed, as that is a matter belonging to the contractor. The tag or label "tenement made" must be affixed to all articles found by the factory inspectors to have been made under conditions violating the provisions of this act.

The amendment of 1896 introduced the very important provision making the owner of any property responsible for the use in violation of this law, as well as the contractors or employers. No fact has been more clearly demonstrated than that in order to carry out the purposes of the legislature it was necessary to make all the parties concerned responsible. In Pennsylvania the factory inspector first called attention to the sweating system in his report for 1892. In 1894 a special investigation of the system in Philadelphia was undertaken by one of the factory inspectors. The result of this inquiry was the passage of the law of 1895 which was afterwards replaced by a new law enacted in 1897. This law

follows closely the New York law except that it does not include any provision regarding the tagging of goods with the mark "tenement made." Eight additional factory inspectors were provided for, with the special duty of enforcing the new law.

Chicago, in Illinois, developed the sweating system in its worst form. The investigations of the factory inspector showed that while there were but 18 factories manufacturing clothing in 1895 employing 1421 persons, there were 1715 contractors or sweating shops with 14,902 employees. This number was a rapid increase over the preceding year, as in 1894 there were but 1413 shops with 11,102 employees. A law directed against the sweating system was enacted in 1893, but, as the figures show, has by no means lessened or even prevented the growth of sweating. The law prohibits the use of living rooms in a tenement house for the purpose of the manufacture of certain articles, except by the immediate members of a family, but does not prohibit the keeping of a workshop in a tenement house. The law also fails to include in the list of articles to which it relates a number of important articles. The wholesaler giving out the work is required to keep a list of the persons to whom work is given, but he is not in any way responsible if the goods are made under the sweating system. The inefficiency of the law is chiefly due to the fact that responsibility is placed on the contractor or sweater instead of the wholesaler, who can more easily be reached by the law.

In Ohio the inspector of factories in his report for 1892 called attention to the sweating system and urged legislation similar to that of Massachusetts and New York. A sweating law, however, was not enacted till April 27, 1896. This law is apparently very efficient. It provides that no dwelling or building, or any room connected with any tenement or dwelling shall be used, except by the immediate members of the family living therein, for the manufacture of clothing, cigars or cigarettes unless it corresponds to certain conditions set forth in the act. These conditions are

that any rooms so used shall be regarded as a factory, and then subject to inspection, shall be separate from and have no door, window or other opening into any living or sleeping room, and shall not itself be used as a living or sleeping room; it shall not even contain beds, bedding or cooking utensils. It must have a separate entrance of its own, be well ventilated and lighted, have separate water closets for the two sexes, and must furnish at least 250 cubic feet of air space in the day time and 400 cubic feet at night for each person employed.

No manufacturer shall give out work to any one after the inspector of factories has notified him that the latter has not complied with the conditions of the act, and each such manufacturer is required to keep a record of the names and addresses of all persons to whom work is given.

New Jersey by an act passed March 17, 1893, prohibited the manufacture of clothing and tobacco goods in any room in a dwelling house except by the immediate members of the family occupying it; and forbade manufacturers giving out work to be done in a tenement or dwelling house by private families unless the latter were provided with a permit granted by the inspector of factories. The law, however, is very ineffective owing to inadequate penalties, the failure definitely to fix responsibility and inadequate number of inspectors to enforce its provisions.

Indiana in 1897 provided an important general factory act. Among its provisions were a number directed specially against the sweating system. They are in general similar to the laws of the other states on this subject.

Maryland has a single one clause act passed April 14, 1896, which makes it a misdemeanor to cause clothing or any other articles to be made in a place or under circumstances involving danger to the public health. The general way in which this act is worded and the absence of a specific statement of conditions to be avoided makes this law absolutely worthless.

The essential principles of this legislation directed against

the sweating system are easily apparent. The first effort was to bring all the small shops in which clothing was manufactured under the general factory laws, and thus subject them to a rigorous inspection as regards their sanitation, heating, lighting, etc. The second was to absolutely prohibit the location of such shops in buildings occupied as dwellings or tenements, and thus insure that the same rooms should not be used as both working and sleeping or living rooms. The third was to give the inspectors the right to forbid the manufacture of clothing under unhealthy conditions, or conditions likely to spread disease. Finally to enforce these regulations an extra force of inspectors has in almost all cases been provided.

These regulations, it will be observed, relate only to shops proper, that is, to places where an employer has under him employees. It would manifestly work a great hardship to forbid families taking in work. It therefore became necessary specially to exempt work performed by a family without any outside assistance. Families, therefore, as such, can manufacture clothing in tenements and dwellings. But it is just with this class of labor that the worst features of the sweating system are found. The law, therefore, while permitting them to work requires them to obtain a permit from the factory inspector to do such work, and this permit is only granted after the inspector has by an examination of the premises satisfied himself that they are in a clean and hygienic condition.

The only direct attack on the sweating system is that requiring tenement-made goods to be marked "tenement made."

The first attempts at legislation were all defective in one vital particular. The prohibitions were directed against, and the penalties imposed on, the petty sweater or the family. Experience soon showed that unless an army of inspectors was employed, it was impossible to ferret out the thousands of small shops located in cellars, attics and back buildings of tenement houses. In most of the states, therefore, amend-

ments were enacted placing the responsibility on the whole-sale manufacturer and on the merchant. These were no longer allowed to shelter themselves behind the statement that they gave out the work to contractors and did not know where or under what conditions it was made up. Thenceforth they were required to keep a record of the names and addresses of all parties to whom work was given, and if the inspectors found that the latter were not complying with the conditions of the law he could notify the manufacturer and forbid him allowing any more of his work to be done there. In the same way the merchant was prohibited from offering for sale any goods made contrary to law.

As regards the practical results achieved by this legislation there can be no doubt that a great deal of good has been accomplished in the way of improving the conditions under which garment workers ply their trade. The inspector of factories of Massachusetts in his report for 1893 said: "The present law in Massachusetts has abolished all tenement house workshops wherein were employed others than members of the same family dwelling therein, and it stands as a bulwark against the future introduction of them, thereby preventing the spread of disease that these dirty tenement house workshops were very likely to breed. The only tenement house employment that remains in the state is confined to private families engaged principally in the finishing of trousers, and in 95 out of every 100 of these families the work is done by only one member of the family, usually the wife and mother. These houses are regulated by the agency of a license which they are obliged to procure in order to obtain work."

In the same year, the inspector of factories of New York reported that "under its (sweating laws) provisions we have been enabled to wipe out the worst places where clothing was manufactured and to cause a vast improvement in nearly every sweating shop in the city of New York. One thing has been demonstrated satisfactorily so far by the enforcement of the law regulating the manufacture of clothing, and

that is, that the dirt and overcrowding which were one of the almost invariable attendants of the sweating evil can be practically wiped out." The report further indicates that 59 modern, well-appointed factory buildings were erected during the preceding year on sites formerly occupied by tenements. These buildings were built expressly to accommodate the clothing trade under the new conditions. They are from five to eight stories high, contain 483 separate shops, and have legal space for 15,477 workpeople. Eighty-five other tenement buildings were also remodeled and made into shop buildings, their use for domestic purposes being then stopped entirely. During the year 17,147 persons employed in the clothing trade were thus required to leave tenement and dwelling houses and locate in regular shops for the performance of their work.

The reports of the other states are similar in character. They all show that as far as the size of the factory inspection force permits, the purely physical conditions under which garment workers are employed can be materially improved.

In the foregoing account of the character and results of legislation concerning the manufacture of clothing and certain other commodities, it will be seen that the efforts of the states have been almost wholly directed to improving the conditions of the premises in which the work is carried on. In no case has the state attempted to interfere and settle what sort of a contract an employer should make with his employees, whether time work should be substituted for piece work, or to regulate the wages or hours of labor of employees, except as already fixed by laws directed against the employment of women and children. The sweating system with its piece work system, long hours and small wages thus remains and must continue to remain untouched by state laws. To attempt to regulate them by law would involve a departure from the established policy of the government not to interfere with the liberty of individuals to make such contracts as they please, and in the case of most, if not



all of the states, would undoubtedly be declared unconstitutional as violating the principle by which the liberty of contracting is guaranteed to every individual. These are features, therefore, which, as has been intimated before, must be improved by the workingmen themselves.

Thus the inspector of factories of Massachusetts in a recent report says: "I wish to state that thus far through the enforcement of legislative enactment, the condition under which clothing was formerly manufactured has been greatly improved, yet no apparent financial benefit has accrued to the victims of the system, and I am firmly convinced that no legislation can ever be enacted to otherwise regulate it." The New York factory inspector is of like opinion, for in his report for 1895 he says: "It must be said, notwithstanding the improvement noted, that the sweat shop evil has not been eradicated. Only the surface conditions have been bettered. The long hours, small wages, with a constant tendency to lengthen the former and reduce the latter, still continue, and will always be a part of the clothing industry in this country while the law permits the contractors to farm out the clothing to families and pit one family against another."

## CHAPTER V.

### THE INSPECTION OF MINES.

The conditions under which mining operations must be conducted are so peculiar and offer dangers of such a nature that most nations have found it desirable to enact special laws regulating the manner in which this industry must be prosecuted. The present chapter is an attempt to show by a rapid sketch how this obligation has been interpreted by the different commonwealths of the United States. In other words, it is desired to show to what extent the mining of coal in the United States is considered an industry requiring special regulation, and what is the character of this regulation as it exists at the present time.

Coal is mined in considerable quantities in only a portion of the United States. We therefore find that of the states and three organized territories 18, or slightly over one-third, do not possess any laws relating specially to coal mining. In most, if not all of these, there is little or no mining done. Disregarding these there remain 30 states, Alabama, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Dakota, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee, Utah, Washington, West Virginia and Wyoming that have enacted more or less detailed laws concerning mining. A study of the extent to which coal mining is subjected to special regulation therefore involves only the consideration of the legislation of these thirty states.

An examination of these various laws shows that a very general agreement has been reached by the different legis-

ures in regard to the character of the regulations that should be provided. The laws of all are strikingly similar. The same provisions and even the same phraseology are found repeated in the statutes of state after state. The differences that exist are mainly in the extent to which regulation is attempted and the efficiency of the system that is provided for its enforcement. It is quite feasible, therefore, to study the legislation of the states as a whole.

If these mining laws be examined analytically it will be seen that their purposes can be grouped in six distinct classes: 1) the regulation of the employment of women and children; 2) the formulation of a set of rules and regulations setting forth more or less specifically the manner in which the operation of mining must be conducted; 3) the insuring that competent men will be employed to fill responsible positions, which is largely done through a system of state examination and the granting of certificates of competency; 4) the requirement that all fatal or serious accidents be reported and investigated; 5) the protection of the rights of miners through regulating the manner of weighing or measuring the quantity of coal mined and the frequency and character of wage payments; and 6) the provision of an inspection service for the purpose of insuring that the laws relating to mining are duly enforced. By taking up each of these points in turn we shall be able to obtain a clearer idea of the extent to which these various objects have been provided for by the different states.

First, in regard to the extent to which the employment of women and children has been specifically prohibited:

Of the 30 states to which we have accredited mining laws, ten, Alabama, Arkansas, Colorado, Illinois, Indiana, Missouri, Pennsylvania, Washington, West Virginia and Wyoming, absolutely forbid the employment of women either on or about mines (clerical work in offices sometimes excepted). As regards the employment of children 20 prohibit the employment of both sexes under a certain minimum age. The five states, Alabama, Iowa, North Carolina, Ten-

nessee and West Virginia have the least rigid exclusion, their laws providing that children under 12 years of age shall not be employed. Furthermore, in Missouri, children under 14, in New Jersey those under 15 and those under 16 in the other states shall not be employed unless they are able to read and write. Ten states, Arkansas, Idaho, Illinois, Minnesota, Indiana, Montana, Pennsylvania, South Dakota, Washington and Wyoming have fixed the minimum age of employment at 14, and Arkansas has in addition required boys under 16 to be able to read and write as a condition precedent to employment. Ohio prohibits the employment of children under 15 years of age in mines. The United States statutes on this subject simply provide that children under 16 years of age can not be employed in any mine in the territories. These prohibitions apply to work above as well as under ground, with the exception of Pennsylvania where the employment of children under 14 years of age in mines is prohibited, but boys between the ages of 12 and 14 years are allowed to work about mines.

It is interesting to note that but five states have attempted to regulate the hours of labor of adults in this industry. Utah, Colorado and Wyoming have declared eight hours to constitute the maximum length of the working day that can be required of any miner, unless extra efforts are required to save property or life; and Montana in 1897 imposed a similar limitation on the hours of labor of hoisting engineers in mines. Ohio passed a somewhat similar law limiting the hours of labor of railway and mine employees to ten a day. These restrictions, it should be understood, do not prevent mine owners from operating their mines any number of hours, by using different shifts of men.

The constitutionality of these laws has been repeatedly contested on the ground that they interfered with the liberty of contract and the property rights of employers as guaranteed by the constitution. The Ohio law was declared unconstitutional. The Colorado law was likewise annulled on the ground that it violated a provision of the state con-

stitution. On the other hand, the supreme court of the United States, in a notable decision in 1898, sustained the Utah law. This would seem definitely to establish the power of the states to pass laws limiting the hours of labor of mine employees, provided their own constitutions did not contain clauses prohibiting such legislation.

Much the greater portion of the mining laws is devoted to setting forth in greater or less detail the various regulations which must be observed in the working of mines. The development of these has been in almost all cases one of gradual evolution. The earlier laws simply provided that proper precautions should be taken to secure the safety of miners. From year to year additional legislation was enacted, specifying particular conditions that must be observed. In time these provisions were gathered together and reenacted as a single law, thus constituting what might be called a mining code.

It is manifestly impracticable to attempt here to describe the exact character of the legislation in each state individually. Fortunately, even the desirability of doing this does not exist. The same provisions are found reproduced with but little change in the laws of almost all the states, the only difference being in the extent to which the formulation of mining regulations has been carried. The following recapitulation of the essential provisions of this legislation gives all of the material points covered by any of the mining laws. Some of the states, notably Pennsylvania, cover practically all of the points here enumerated in their laws, while others merely include the most important.

The mining code of an American state in its most developed form therefore provides: 1) that every owner, operator or superintendent of a mine employing over a certain number of persons, usually ten, shall cause to be prepared an accurate map or plan of such mine on a scale of 100 or 200 feet to the inch showing all the workings of the mine; that this map shall be revised at least once in six months in order to show new workings; that when a mine is aban-

doned a final accurate map must be made of it, and that copies of these maps must be furnished to the mine inspector and other copies be kept where they can be readily inspected at the mines; 2) that in mines where 20 or sometimes ten persons are employed there must be at least two escapement openings to the surface from each seam, separated from each other by natural strata of a certain thickness, 100 or 150 feet; 3) that mines must be so ventilated by artificial means that there will be furnished a minimum of 100 cubic feet of air a minute for each person employed; 4) that doors used to direct or control ventilation be so hung that they will close automatically and that doorkeepers be provided for the more important passages; 5) that an adequate supply of timber for props be constantly available; 6) that suitable means be provided for raising or lowering workingmen in mines, and to secure this that the cage used for this purpose have a top or bonnet of metal to protect the passengers from articles or rocks; that no single cable be used; that the cage be equipped with a safety catch; and that the cable drum be provided with flanges and a brake; 7) that all passage-ways through which cars pass have shelter holes in the sides not less than 15 or 30 feet apart into which workingmen may retreat to avoid passing cars; 8) that the mines be kept well drained; 9) that there be a metal speaking-tube or other means of vocal communication between the bottom and top of all shafts; 10) that a certain code of signals, usually as specified in the act, be employed to regulate the movement of the cages up and down the shafts; 11) that only authorized persons be allowed to ride on loaded cars and cages; 12) that no coal be hoisted while men are ascending or descending the shafts; 13) that all machinery be properly guarded; 14) that abandoned passages be closed; 15) that shaft openings be fenced; 16) that steam boilers be inspected at certain intervals; 17) that only a certain quality of vegetable or animal oil be used for lighting; 18) that precautions be taken to prevent injury from falling coal or rock; 19) that blasting operations be properly regulated;

20) that copies of mining rules be conspicuously posted. For mines generating fire-damp special precautions must be taken, as 21) that they be examined every morning with a safety lamp before miners go to work; 22) that all safety lamps be owned by mine owners; 23) that bore holes of a certain depth be kept in advance of the workings of all passages when approaching workings.

The above are the usual provisions of a mining code. In a few cases conditions are given which are not included in this list. Thus Pennsylvania requires all stables in mines to be built in the solid strata without the use of wood; Pennsylvania and Montana, that stretchers be provided for removing injured workmen; and Kansas, that all blasts be fired by special firers.

Rules, however, can never replace the personal element. The best of rules are of but little avail unless competent men can be secured to supervise their application. The most significant and important feature of the whole system of mine regulation, therefore, is that by which a number of states have sought through a system of examinations to insure that those in charge of the actual operations of mining shall be competent men. The positions thus specially provided for are those of mine foreman or boss, fire boss, and occasionally that of hoisting engineer.

The majority of the mining states, including California, Colorado, Kansas, Maryland, New Mexico, Tennessee and West Virginia, simply provide that the underground operations of mines shall be in charge of a competent superintendent or mining boss, whose special duties are to see that a proper amount of ventilation is provided, that the walls and roof are properly timbered, etc., and that in the case of all mines generating fire-damp there shall be employed a "fire boss," with the duty of examining all working-places for gas every morning before the miners go to work.

The more important mining states, however, have gone much further. They have treated the positions of "mine boss" and "fire boss" as of such responsibility that no one

is allowed to fill them till it is duly certified by the state that he possesses the required knowledge and experience. These positions have thus been put into the category of licensed occupations, such as piloting and plumbing. States have thus required on the one hand that every mine be under the supervision of such officers, and on the other that these officers be in possession of certificates of competency granted after satisfactory examination.

The Pennsylvania law, for example, provides that on the petition of any mine inspector the court of common pleas in any county in the district shall appoint a board of examiners to consist of a mine inspector, a miner who has received a certificate of competency, and an operator or superintendent, whose duty it is to examine all applicants for the position of mine or fire boss. To secure a certificate of competency it is necessary for an applicant 1) to be at least 23 years of age; 2) to have had five years' experience as a miner in bituminous coal mines of the state after he had attained the age of 15 years; 3) to be a citizen of the state; 4) to be of good moral character; and 5) to pass an examination as to his knowledge of mining. Certificates of two grades are granted, that of the first grade to those who have had the experience which qualified them to serve in mines producing gas; and that of the second grade to those who have not had this experience and therefore can not be employed in such mines. In order to protect those serving as mine or fire bosses when the act was passed, it was provided that "certificates of service" should be granted to those who had been employed with the same company during the year preceding, with the proviso, however, that before they could take service with another company they should obtain a certificate of competency.

Illinois, Indiana, Alabama, Montana and Wyoming have followed the lead of Pennsylvania and have enacted almost identical provisions, the first two requiring in addition that all hoisting engineers must also be provided with certificates of competency.



As the prevention of accidents constitutes the most important purpose of mine regulation, it is evidently very desirable that accurate information should be obtained concerning the frequency and causes of accidents, in order to determine the responsibility for such occurrences, and whether any progress in their prevention is being made. Every one of the 20 states possessing factory codes, with possibly one or two exceptions, requires that the mine owner or superintendent shall report to the inspector of mines every accident resulting in death or serious injury to an employee. It is further provided that in case of fatal accidents the coroner shall be notified and an inquiry held to determine the person at fault for its occurrence. The mine inspectors are also required to embody in their regular reports statements of all accidents occurring during the year. The information thus afforded is of great value, but unfortunately in no case does it approach anything like desirable detail. The term "serious injury" which occurs in all the acts is altogether too vague and uncertain. In order to be of the maximum value the report of each accident should show the cause of such accident, the extent of the injury caused, whether resulting in death, total or partial incapacity for labor, or temporary disability, the length of time so disabled, the age of the person injured, and whether the accident was due to the fault of the person injured, to another, or to an unavoidable cause. Whatever the information obtained, however, it is to be regretted that greater uniformity does not exist between the practice of reporting accidents in the different states. Improvement in the collection of statistics of accidents to miners is largely dependent on the mine inspectors of the different states adopting the same form of report for accidents.

We now turn to what may be called the keystone to the whole system of state regulation of mines—viz.: the appointment of state officers or mine inspectors with the duty of personally supervising or controlling certain features in mining and seeing that the conditions required by the state

are complied with. It has been the universal experience that labor legislation is of little utility unless some system of good government supervision is at the same time provided. In a way, therefore, the measure of the efficiency of mine regulation is that of the efficiency of mine inspection.

Most of the mining states have recognized the necessity for government supervision, and 27 states have made some provision for the inspection of mines. The majority of these, viz.: Arkansas, Idaho, Kansas, Kentucky, Maryland, Michigan, Missouri, Utah, Washington and Wyoming, have provided for only one inspector. In North Carolina and Tennessee, the commissioner of labor is the inspector. In New Jersey and New York, where there are no coal mines, the offices of inspector of factories and mines are combined. Maine, which also has no coal mines, has an inspector of factories, workshops and mines, but his duties seem to be of a purely statistical character. The United States statute provides that an inspector of mines shall be appointed by the president for each territory producing 1000 tons of coal yearly. Colorado, Indiana, Montana and West Virginia each has two inspectors; Alabama and Iowa each has three inspectors; Washington has a state geologist who acts as mine inspector, and has two assistant inspectors; Illinois has seven inspectors; Ohio has one chief inspector and seven district inspectors; and Pennsylvania has one inspector for each district containing not less than 60 nor more than 80 mines.

The duties of inspectors are generally stated to be to inspect all mines with specified frequency, yearly, semi-annually or quarterly, and to see that all the requirements of the law relating to mining are strictly complied with. In addition to these general duties, however, it is usual to specify that they shall keep an exact record of all inspections, and that they shall report annually or biennially, showing particularly the condition of the mining industry and the number of accidents. These reports therefore serve the double purpose of showing the results accomplished by

inspection, and giving general statistics and other information concerning mines.

For the enforcement of mining laws, with their technical provisions, it is evident not only that a considerable technical knowledge is required of the inspectors, but that no small degree of discretion must be left to them in the enforcement of the obligations which they impose. It is highly desirable, therefore, that competent and specially trained men should be secured for these positions. As the most certain way of accomplishing this, the practice is now becoming general for these officers to be selected only on satisfying certain requirements and passing a wholly or partly competitive examination.

The Pennsylvania system thus provides for a board of examiners to be composed of two mining engineers and three other persons who have passed examinations as mine inspectors or mine foremen, to examine candidates for the position of inspector of mines. The examination must be in writing, with an oral examination concerning explosive gases and safety lamps. Candidates must be citizens of the state, of temperate habits, 30 years of age or over, with at least five years' experience in bituminous coal mining in the state, and an experience in mines generating fire-damp. The names of successful candidates are certified to the governor, who makes the appointments.

Illinois has a board of examiners composed of two practical miners, two coal operators and one mining engineer appointed by the bureau of labor statistics. The qualifications required of inspectors are about the same as in Pennsylvania. In Indiana the inspector is appointed by the state geologist after an examination, and an assistant inspector is appointed by the latter, also after an examination. Both must have had an experience of at least ten years in practical mining. In California the examining board is appointed by certain judges, and the inspectors must be 30 years of age and have had five years' mining experience. In Washington the board consists of three practical coal

miners, three coal operators and a mining engineer, and the inspector must have two years' experience. Iowa has a board composed of two miners, two operators and a mining engineer, and the inspector must be 25 years of age with five years' experience. The other states which do not possess mining boards usually specify that inspectors must be of a certain age, possess both a theoretic and practical knowledge of mining, and have had an experience in practical mine work for a certain number of years. In all cases it is provided that inspectors must not be financially interested in any mine in the state.

The last class of mining laws are in their nature quite distinct from those we have been considering. They have for their object the regulation of the relations between mine operators and their employees. The economic dependence of the miners has undoubtedly in some cases been taken advantage of in the past, and the miners defrauded or at least unjustly treated in a number of ways. The two greatest grievances of the miners have been that the employers have not given them credit for all the coal mined by them and that they have been compelled to trade at stores owned and conducted by the mine owners.

In itself the establishment by the companies of stores to supply the wants of their employees possesses nothing detrimental to the rights or liberties of the workingmen. On the other hand there is no reason why they should not serve a useful purpose. Unfortunately there can be little doubt that in many instances these stores have been used by companies as a means of oppression. Miners were compelled to trade at the store conducted by their employers, and to insure their doing so they were frequently paid in scrip orders on the store instead of in money. A system of credit was at the same time practised which kept the workingman constantly in debt to the company, and as the wages were withheld to meet this indebtedness, employees would frequently go for long periods without receiving any money that they could dispose of as they saw fit. There was no

check on the prices that could be charged for commodities. Any increase in wages could thus be made a fiction.

For a long time this "truck system," as it was called, constituted one of the greatest sources of friction that existed between the mine owners and their employees. The miners themselves did not possess sufficiently strong organizations to offer a successful resistance. Great pressure was therefore brought to bear on the legislatures of all the mining states to prohibit by law the system of company stores, and most of the states passed laws to this effect. This prohibition has taken two forms, either directly forbidding mining companies to own or control stores, or more often requiring that all wages shall be paid in money, or if paid in scrip that this scrip shall be redeemable on demand in money. At the same time the payment of wages as often as once every two weeks was made obligatory.

The constitutionality of these laws has been attacked in a great many instances, and many of them have been declared unconstitutional. In Pennsylvania, Illinois, Missouri and Tennessee they were declared void because they violated the liberty of contract guaranteed by the constitution. In Tennessee the curious ground was taken that such a law indirectly provided for imprisonment for debt, which was prohibited by the constitution. In Indiana, however, the law was upheld and New York avoided any constitutional objections by limiting the scope of the law to corporations. In spite of the fact that laws regulating the payment of wages have been declared void in so many states, the results desired have in great part been accomplished. This has been due, on the one hand, to the arousing of public opinion on the subject, and on the other, to the fact that employers are beginning to recognize more fully their obligations toward their employees.

As regards the second complaint, concerning the manner of determining the amount of coal mined by each miner, practically all of the 20 states under consideration have enacted laws the purpose of which is to insure that the

coal is honestly weighed. There is little difference between the legislation of the several states. The typical method of regulation is to prescribe that at all mines there shall be provided with suitable and accurate scales for weighing coal; that these scales shall be inspected periodically by mine inspectors or the miners themselves; that the weighman must take oath to perform his duties honestly and keep an accurate record of the amount of coal weighed; that these records shall be open to inspection; and finally, as an additional precaution, that the miners shall have the right to employ a "check-weighman" who shall be permitted by the company to superintend the weighing of all coal, and thus control the work of the company's employee. In case such a check-weighman is employed he must also be sworn and must keep an accurate record of the coal weighed. Some states, as Maryland, Pennsylvania and West Virginia, also require that all cars be numbered, and their weight and capacity plainly marked on each one.

A few states, notably Illinois, Indiana, Iowa, Kansas, Missouri and Washington have exercised a more direct intervention and made it compulsory on all mine operators to weigh coal before it is screened. This law has been resisted by the mine operators, and in Illinois at least has been declared unconstitutional, because it is special legislation and deprives persons of the liberty of making their own contracts.

We have now passed in review the various ways in which the operations of mining have been subjected to special regulation by the states. Experience has amply demonstrated that this interference on the part of the government, and the formulation of regulations setting forth in detail the various precautions that must be taken, have been absolutely necessary for the protection of miners against accidents. The present degree of regulation has been the result of a gradual growth, and the goal has as yet been by no means reached. Pennsylvania, Illinois, Ohio, West Virginia and several other important coal mining states are

now in possession of quite complete mining codes, but the majority of states have far from reached this standard. The latter have, however, the completer legislation of the former states as models, and not a year passes without additions and improvements to the mining laws of some of them.

To one looking over the whole field it seems that the most important step that can be taken is to extend the system already practised by a number of states of securing the thorough and frequent inspection of mines by competent officials and the requirement of certificates of competency on the part of men assigned to fill responsible positions. James Bryce, with his accustomed perspicuity has said that good men can make any political system work tolerably, but that no system however perfect will give satisfactory results unless in the hands of honest and capable persons. What is true of political machinery is equally true of industrial organization. Certainly it is desirable to have a good code of mining regulations, but it is more important still that capable men be secured to direct their application.

## CHAPTER VI.

### INDUSTRIAL CONCILIATION AND ARBITRATION.

The power to enact legislation in relation to the settlement of labor difficulties lies entirely within the domain of the individual states, with the single exception that the control of the federal government over interstate commerce gives it power to enact legislation in relation to labor disputes affecting transportation companies engaged in work.

For all practical purposes, the year 1886 marks the beginning of modern legislation on the part of the state for the arbitration or conciliation of strikes. Prior to that time New Jersey in 1860, Pennsylvania in 1883 and Ohio in 1886 had, to be sure, passed laws in relation to this subject but their provisions were of little importance, merely granting permission to employers and employees to settle their disputes through arbitration, a right which they really possessed without such legislation.

In 1886, however, a radical departure from the character of this legislation was made. In that year Massachusetts and New York each passed a law providing for the creation of a permanent state board of arbitration and conciliation to which industrial disputes might be referred for settlement. The lead of these two states was quickly followed and at the present time there are 24 states<sup>1</sup> with legislation in relation to the arbitration and conciliation of labor disputes upon their statute books.

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<sup>1</sup> Massachusetts, New York, Montana, Michigan, California, New Jersey, Ohio, Louisiana, Wisconsin, Minnesota, Connecticut, Illinois, Maryland, Utah, Indiana, Idaho, Colorado, Wyoming, Kansas, Iowa, Pennsylvania, Texas, Missouri and Nebraska.



It is manifestly impracticable within the limits of this monograph to attempt a statement of the character of the legislation of each of these states. Of the 24 states mentioned but 16<sup>\*</sup> make provision for a permanent state board of arbitration, and in but four or five of these has any effective system been inaugurated in virtue of these laws. The laws of the remaining states for the most part only provide that when the parties desire or petition for it, local or temporary tribunals can be created for the arbitration of their disputes.

The Missouri law provides that when differences arise between employers and employees threatening to result or resulting in a strike or lockout, it shall be the duty of the commissioner of labor to mediate between the parties to the controversy, if either party requests his intervention, and under certain circumstances to form local boards of arbitration. Similar powers are conferred on the commissioner of labor statistics of the state of North Dakota.

The laws of Pennsylvania, Iowa, Kansas, Maryland and Texas simply authorize the law courts to appoint tribunals of voluntary arbitration when the parties to labor disputes petition for or consent to their appointment, the jurisdiction of such tribunals being limited to the county or portion of the state in which the dispute may arise.

These laws merit but little attention. The parties to such controversies have rarely if ever availed themselves of the provisions of the laws in the states where there are no regularly constituted boards of arbitration.

As regards the legislation of many of the states providing for permanent boards, the same statement can be made. In some of these states no boards have ever been constituted in virtue of the law, and in others but insignificant results have been accomplished by the boards after they have been organized. From every point of view, the systems created

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<sup>\*</sup> Massachusetts, New York, New Jersey, Ohio, Connecticut, Illinois, Montana, Michigan, California, Louisiana, Wisconsin, Minnesota, Utah, Indiana, Idaho and Colorado.

by the states of Massachusetts and New York are the most worthy of study. They were the first created and have now had an uninterrupted existence of 13 years or more, and the work done by them is far in excess of that done by all the other boards combined. The systems created in both states are very similar. The following is a brief statement of the essential features of the Massachusetts law:

A state board of conciliation and arbitration is created to consist of three persons appointed by the governor of the state. One of these persons must be an employer selected from some association representing employers of labor, one not an employer and selected from some labor organization, and the third to be selected by the two. Their term of office is three years, one retiring each year, and their salary \$2000 each a year.

The usual method of bringing controversies before the board is as follows: Whenever any dispute arises between an employer of 25 or more persons on the one side and his employees on the other, either party can make application to the board for its intervention. These applications must be signed by the employer or a majority of the employees in the department of business in which the difference exists, or by their duly authorized agent. On the receipt of this application the board must as soon as possible visit the establishment, make a careful inquiry concerning the cause of the dispute, and make a written statement of its decision, which decision must be properly recorded and also at once made public.

In the hearing of the case, either of the parties can ask for the appointment of a person to act in the case as expert assistant to the board. Such expert will receive for his services \$7 a day and necessary traveling expenses.

The decision of the board is binding on the parties who join in the application for six months, or till either party has given a 60 days' notice of his intention not to continue to abide by the decision.

It is also made the duty of the mayor or municipal au-

thorities of cities and towns to notify the board when a strike or lockout is seriously threatened or actually occurs.

In addition to thus intervening when called on, it is the duty of the board whenever it receives information, either through the mayors or town authorities or others, that a strike or lockout as above described is threatening or in progress, to put itself in communication with the parties, and endeavor by mediation to effect an amicable settlement between them or to refer the matter to arbitration for settlement. In such cases the board can, if it deems it advisable, investigate the causes of the trouble, determine the party which it believes to be at fault and publish its findings, assigning the proper responsibility.

Provision is finally made that parties to disputes can if they desire refer the matter to a local board of arbitration to be created for that purpose, in the manner laid down by the act.

The most important feature to be noted in this as well as in the legislation of all the other states is that not the slightest attempt has been made to introduce the principle of compulsory arbitration. The general feeling in the United States in regard to this subject is that while such a measure might be desirable, no way has as yet been devised by which such a scheme could be made to work. The chief, if not the only reliance must be placed on the good faith of the parties and the moral effect exerted by the decision of the board.

The arbitration boards of most of the states have either been in existence for a short time, or their operations have been on so small a scale that little can be learned concerning their efficiency.

The boards of Massachusetts and New York, however, have now been in existence 13 years, and their annual reports afford valuable data for a study of methods of arbitration. The reports of the board of New York are not so compiled as to permit of a tabulated statement of the work achieved. The following table, however, compiled from the annual reports of the Massachusetts board, shows that

the work of the board, at least quantitatively considered, is of much importance.

Year.	Cases cited in annual report.	Estimated yearly earnings of employees directly concerned.	Estimated yearly earnings of all employees in factories concerned.	Cost of maintaining board.
1886	4	.....	.....	.....
1887	21	.....	.....	.....
1888	41	\$953,170	\$5,735,992	\$3,602 30
1889	26	3,684,000	10,162,000	8,433 38
1890	34	4,056,195	12,044,525	8,108 86
1891	30	2,307,000	9,038,750	8,592 36
1892	40	2,034,804	8,986,210	10,430 44
1893	36	1,652,246	8,637,625	8,980 00
1894	39	6,054,900	10,039,700	10,873 15
1895	32	1,704,666	7,433,350	10,028 16
1896	36	1,036,360	3,840,800	10,397 87
1897	31	1,216,300	10,012,480	11,305 86
1898	22	4,227,570	7,849,703	8,714 07

In regard to the value of the work of these boards, though they have far from obviated strikes, or even been as effective as it was hoped they would be, it is the general opinion that the boards have proven to be useful institutions.\*

The boards themselves undoubtedly think that they accomplish results of sufficient importance to justify their maintenance. The Massachusetts board thus says in one of its reports: "It is very confidently to be asserted, as we have said in former reports, that arbitration and conciliation

\* The contrary opinion is held by Mr. North in his article, Industrial arbitration, its methods and its limitations, *Quarterly Journal of Economics*, July, 1896.

in the name of the state are fully justified by practical experience in this Commonwealth." Mr. Cummins, who has made a careful examination of the work of these boards on two separate occasions, is of the same opinion. He well says: "They (the board) accomplish much more than they actually decide. Their work is largely preventive. They remove the last excuse for gratuitous resort to industrial warfare by employer or employee. They lend official dignity to all important principles of peaceful negotiation. They menace the guilty with the displeasure of public opinion, which is nowadays more and more backed by money as well as morals, and they strengthen the weak with the hope of aid against oppression. They stand for a generous recognition of industrial liberty as opposed to class theories of compulsion. In the official organ of impartial investigation they also remove the last excuse for unwise and unintelligent meddling on the part of public opinion."<sup>4</sup>

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<sup>4</sup> As is well known, the federal government has taken action regarding the arbitration of labor disputes affecting interstate commerce, first by the act of October 1, 1888, and later by the act of June 1, 1898. Interesting as is the legislation its consideration does not fall within the scope of this paper.



# THE HISTORY OF SUFFRAGE IN VIRGINIA





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History is past Politics and Politics are present History.—*Freeman*

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THE HISTORY OF SUFFRAGE  
IN VIRGINIA

By JULIAN A. C. CHANDLER, Ph. D.

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## PREFACE

This monograph and my previous paper on "Representation in Virginia," published in the Fourteenth Series of the Johns Hopkins University Studies in Historical and Political Science, form chapters of a Constitutional History of Virginia, which is now in preparation. At the present moment great interest centers in the governmental history of the State, as Virginia is upon the eve of adopting a new Constitution. In view of this fact, it is to be hoped that this paper, by tracing out the history of suffrage in Virginia, may be of service in the discussion of the all-important question, the elective franchise. It is generally conceded that, though many subjects of great political interest are now before the people of the State, none is more important than the suffrage question. The Constitutional Convention was called primarily for the purpose of making changes in the electorate.

Thanks are due to Professors Herbert B. Adams and J. M. Vincent, of the Johns Hopkins University, and to Mr. W. W. Scott, of the Virginia State Library, for valuable suggestions in the preparation of this essay.

J. A. C. CHANDLER.

*Richmond, Va., May 1, 1901.*



# THE HISTORY OF SUFFRAGE IN VIRGINIA

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## CHAPTER I.

### SUFFRAGE BEFORE 1830.

In 1619 the people of Virginia were, for the first time, granted the rights of suffrage. At that time came Governor Yeardley who, as an officer of the London Company, established in Virginia a representative form of government<sup>1</sup> and called the first Legislative Assembly that ever met on American soil. In the writs which ordered the election of "Burgesses," he ordained that they should be elected by the "inhabitants" of the colony.<sup>2</sup>

Two years later Sir Francis Wyatt, who came as the successor of Yeardley, brought to the colony the famous "Ordinance and Constitution" of July 24, 1621. By this constitution the privileges which had been granted by Yeardley were affirmed by the London Company, and again it was stated that the Burgesses were to be chosen by the "inhabitants."<sup>3</sup>

At first glance one would think that the Virginia Colony had universal suffrage, that both men and women exercised the privilege and duty of voting; but, if we read between the lines the election law of 1646 (a law enacted with reference to the mode of conducting elections, and in no way intended to define an elector's qualifications), it is evident that the right of suffrage was granted only to freemen, except that "indented" or "covenant" servants were to be

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<sup>1</sup> Chandler's Representation in Virginia (J. H. U. Studies, 14th Ser.), p. 12 et seq.

<sup>2</sup> Smith's Hist. of Va., vol. ii, p. 39.

<sup>3</sup> Hening, vol. i, p. 112.

recognized as freemen.<sup>4</sup> In 1655, the right of suffrage was, for the first time, abridged, being confined to "housekeepers, whether freeholders, leaseholders or otherwise tenants," but the term "housekeepers" was to be so construed that only one in a family was to have the right to vote.<sup>5</sup>

At the next session of the General Assembly (1656), the right of suffrage was again extended to all freemen, because the Burgesses considered it "something hard and unagreeable to reason that any person shall pay equal taxes and yet have no votes in elections."<sup>6</sup> By the revised laws of 1658 the franchise was still allowed to all freemen.<sup>7</sup> In 1670 the right of suffrage was restricted. The following is a part of the act:

"Whereas the usuall way of chuseing burgesses by the votes of all persons who, haveing served their tyme, are ffreemen of this country, who haveing little interest in the country, doe oftener make tumults at the elections to the disturbance of his majesties peace, than by their discretions in their votes provide for the conservasion thereof, by making choyce of persons fitly qualified for the discharge of soe greate a trust, and, whereas the lawes of England<sup>8</sup> grant a voyce in such elections only to such as by their estates real or personall have interest enough to tye them to the endeavor of the publique good: It is hereby enacted that none but freeholders and housekeepers, who only are answerable to the publique for the levies, shall hereafter have a voyce in the election of any burgesses."<sup>9</sup>

In 1676 occurred Bacon's Rebellion, a rebellion for the

<sup>4</sup> Hening, vol. i, p. 334.

<sup>5</sup> *Ibid.*, vol. i, p. 412.

<sup>6</sup> *Ibid.*, vol. i, p. 403.

<sup>7</sup> *Ibid.*, vol. i, p. 475.

<sup>8</sup> In the time of Henry VI the franchise in England was limited to those who had estates of a rental value of 40 shillings a year. In the commonwealth period it was extended to all persons owning 200 pounds' worth of property, whether real or personal. On the restoration of the Stuarts the old freehold qualification was again reenacted. Feilden's Const. History of England, pp. 132-133.

<sup>9</sup> Hening, vol. ii, p. 280.



rights of freemen, and one of the first laws passed by the General Assembly which was summoned by Virginia's first rebel, was the repeal of the act of 1670 and the extension of suffrage once more to all freemen."

Free manhood suffrage was not in accord with the narrow ideas of Charles II; so, in 1676, he wrote to Sir William Berkeley: "You shall take care that the members of the Assembly be elected only by freeholders as being more agreeable to the custom of England, to which you are, as nigh as conveniently you can, to conform yourself."<sup>10</sup> The following year, through the influence of Berkeley and the King, a law was enacted that freeholders only were to be electors. This was the first law which cut off housekeepers who were not freeholders."

In 1699, the General Assembly reaffirmed the statute of 1676, but in addition enacted that "no woman, sole or covert, infants under the age of twenty-one years, or recusant convict, being freeholders" should enjoy the franchise."<sup>11</sup> The wording of this act shows that the parties mentioned as unqualified to vote had never had the right, and that the disfranchising clause was simply the embodiment of the then existing customary law.

In 1705, the General Assembly adopted what might be termed a revised code of laws. In this code a freeholder is defined as a person who has "an estate real for his own life, or the life of another, or any estate of any great dignity."<sup>12</sup>

Under this statute a freehold was merely nominal; and, as a result, many fraudulent "leases of small and inconsiderable parcels of land upon feigned considerations" were often made by the candidates for the House of Burgesses

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<sup>10</sup> Hening, vol. ii, p. 356.

<sup>11</sup> *Ibid.*, vol. ii, p. 425.

<sup>12</sup> *Ibid.*, vol. ii, p. 425. This is not the view expressed by Hening in the preface to his first volume. According to Hening the first statute to restrict suffrage to freeholders only was the act of 1670. That act certainly granted the franchise to housekeepers.

<sup>13</sup> Hening, vol. iii, p. 172.

<sup>14</sup> *Ibid.*, vol. iii, p. 240.

or by their agents," so as to control an election. Because of such fraud practiced in the elections, a desire arose for an electorate composed of only *bona fide* freeholders, possessing a sufficiently large landed estate to make them truly interested in all public questions. The cheapness<sup>15</sup> of land made it easy to acquire a small freehold; and, for this reason, among the higher and ruling class, there was a feeling for a much higher property qualification. If we can rely upon Governor Spotswood's statement, in 1712, the Virginia Assembly was composed of extremely worthless representatives. He claimed that this condition was due to a defect in the Virginia constitution which allowed every man who could acquire as much as one-half of an acre of land the right to vote.<sup>16</sup> Even a free negro if he was a freeholder was a voter.<sup>17</sup> The statement is also made that the Virginians favored the extension of suffrage to all free-men. The English Board of Trade, however, instructed Governor Spotswood and the Council in Virginia to propose a law to increase the qualifications of electors. The Board of Trade further said, if the colony refused to assent, that Spotswood should try to enforce his instructions, and that the Board would see that something was done in England to force the colonists to obedience.<sup>18</sup> The opposition of the Governor and the Board of Trade to a liberal suffrage, together with the discovery of an intended negro insurrection,<sup>19</sup> undoubtedly influenced the Virginia Assembly to pass an act in 1723, by which negroes, mulattoes and Indians, though they were freeholders, were deprived of the privilege of voting.<sup>20</sup> And finally, in 1736, an act was passed

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<sup>15</sup> Ibid., vol. iv, p. 475.

<sup>16</sup> The right to a fifty-acre freehold could be secured for five shillings. (Ballagh: *White Servitude in Va.*, p. 86.)

<sup>17</sup> Sainsbury MSS., Package iii (1706-1714), under date of Oct. 15, 1712, and Spotswood's Letter, vol. ii, pp. 1-2.

<sup>18</sup> Ibid., Package i (1606-1740), p. 158.

<sup>19</sup> Ibid., Package iii (1706-1714), under April 23, 1713, and July 20, 1713.

<sup>20</sup> Ibid., Dec. 20, 1722.

<sup>21</sup> Hening, vol. iv, p. 133.

by which a freehold was made to consist of one hundred acres of uncultivated land without a house, or twenty-five acres of improved land with a house on it. A house and lot in a town constituted a freehold. When a piece of land was held by several joint tenants, not more than one vote could be cast in respect of that land, "unless the quantity be sufficient to allot to each joint tenant, or tenant in common, one hundred acres at least, if the same be uninhabited, or twenty-five acres with a house and plantation thereon."<sup>22</sup> No person was allowed to vote because of his freehold, unless he had been in possession of it for at least twelve months before the issuing of the writ for the election.<sup>23</sup> As had been enacted in 1723, a negro, mulatto, Indian, feme sole or covert, minor, or recusant convict could not vote, though qualified with a freehold.

In 1762 and again in 1769 the General Assembly enacted that the franchise should be extended to a man who owned fifty acres (instead of one hundred) of uninhabited and uncultivated land, but to both of these acts the English sovereign refused approval.<sup>24</sup> The other features of the law of 1736 were left unchanged. These two acts, though failing to become laws in Virginia, show that the people of the colony were in favor of allowing the owners of small freeholds a voice in the government.

Virginia always held closely to English institutions; partly because the people were lovers of the institutions of the mother-country, and partly because the kings of England, or the governors of the colony acting under royal

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<sup>22</sup> *Ibid.*, vol. iv, pp. 475, 476.

<sup>23</sup> Moreover, the freeholder had to vote in the county where his freehold was located, but this was never strictly enforced. Often a man voted in the county which was most convenient. This lasted till 1830. A freeholder could also vote in as many counties as he had freeholds. This was not prohibited till 1851. (*Nation*, April 27, 1893.)

<sup>24</sup> *Hening*, vol. vii, p. 518; vol. viii, p. 305. Every law passed in Virginia had to be sent to England for the King's approval before it became binding on the colony. The Board of Trade usually acted for the King.

instructions, instituted on Virginia soil, even though the people might not sanction them, such practices as had existed in England. Even as in England one system of franchise existed in the counties and another in the boroughs, so in Virginia the city of Williamsburg and the borough of Norfolk had, under their charters, special privileges as to suffrage. In 1722 the city of Williamsburg received from George I. a charter by which the right of suffrage was granted: (1) to any man who owned a house and lot in the town; (2) to any person who had any "visible" estate of fifty pounds current money, and (3) to any person who, after having served an apprenticeship of five years in the city, had become a housekeeper and inhabitant of the town. In 1742, the General Assembly passed an act explanatory of this charter. It declared: (1) that in case of joint ownership of a house and lot, only one vote could be cast because of that freehold, and that no vote should be cast unless the joint owners could agree; (2) that a person who owned any property of fifty pounds value had to be a resident of the town for at least twelve months before the election, and (3) that a person who had served an apprenticeship in the town had to be an actual resident and housekeeper of the town at the time of the election.<sup>22</sup> Of course, no residential qualifications were required of the freeholders of the city, as every man in Virginia could vote in every place where he had a freehold.

In 1736, a charter was granted to the borough of Norfolk. The same privileges of suffrage which Williamsburg enjoyed were allowed to the citizens of Norfolk.<sup>23</sup> In all other boroughs in Virginia only freeholders were to enjoy suffrage for the election of members to the General Assembly.<sup>24</sup>

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<sup>22</sup> Hening, vol. v, p. 204.

<sup>23</sup> *Ibid.*, vol. vi, p. 261.

<sup>24</sup> *Ibid.*, vol. iii, p. 236. Jamestown, for instance, had the privilege of electing a burgess, but only freeholders living on the island could vote. After Williamsburg became the capital, there were only about ten freeholders at Jamestown.

The English system of allowing Parliamentary representation to the universities was applied to the College of William and Mary. By its charter of 1693 one burgess was allowed that institution.<sup>28</sup> The right to elect this burgess was given to the president and professors of the college without reference to any qualification of property or residence. Here was an educational qualification on a small scale.

In colonial days aristocracy prevailed. As we have just seen, suffrage was in all the rural districts confined to the freeholders, so that only a small per cent. of the population could vote; but aristocratic principles are to be seen in still another way so widely different from our modern days. Now every petty official is elected by popular vote, but in colonial days no man voted except for burgesses, and the election of these was often infrequent. Sometimes there were annual elections, and sometimes the General Assembly, just as the English Parliament, was prorogued from year to year, so that a new election might not take place in seven, eight or ten years. How little power the people had in their government when compared with the present conditions! Even in towns the people sometimes had no voice in the municipal government. In Williamsburg and Norfolk, however, the qualified voters had the right to elect their municipal officers. There were many more towns in Virginia at the opening of the Revolutionary War, but they were not incorporated, and their affairs were in the hands of Trustees, who were named in the acts by which the towns were established; and, therefore, the people in these small towns had no voice in the town affairs, except that, in some instances, vacancies among the Trustees were filled by an election, but more frequently the Trustees themselves had the power to fill the vacancies.<sup>29</sup>

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<sup>28</sup> Charter of William and Mary, Morrison's *College of William and Mary*, p. 19.

<sup>29</sup> There were two kinds of towns in Virginia: (1) The incorporated towns, which had a mayor, council, etc., elected directly or

Thus matters stood in 1776 when Virginia threw off the British yoke. In the convention of 1776, which drew up Virginia's first constitution, George Mason, the author of the famous "Declaration of Rights," was the only man who advocated a change of suffrage. He proposed to extend the franchise to all persons twenty-four years old who had an estate of inheritance of land of 1000 pounds value, and to all having leases in which there was an unexpired term of at least seven years. He also proposed (which reminds one of the Roman constitution) to put a premium on the father of a growing family, and to grant to every housekeeper, "the father of three children in the country," all the privileges of suffrage." At this time Jefferson was a member of the Continental Congress at Philadelphia, but, on hearing that Virginia was about to draft a constitution, he prepared a plan of government which was sent immediately to Williamsburg. It arrived too late to be used, as the convention had already agreed upon the constitution. But no preamble having been adopted, the preamble to Jefferson's plan was immediately affixed to the new constitution, and adopted along with it on the 29th day of June, 1776, just five days before the Continental Congress adopted Jefferson's Declaration of Independence.<sup>61</sup>

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indirectly by the qualified voters; and (2) the unincorporated towns, where the affairs were managed by Trustees. A house or lot in towns of either class entitled one to vote in the elections in the county in which the town was located.

<sup>61</sup>Madison's Works, vol. i, p. 24. Mason proposed that the voters should elect the lower house of the General Assembly, and should also elect a body of electors who should choose the senators. A similar plan was afterwards advocated by Jefferson, and it is interesting to note that this plan of an electoral college which Virginians were wise enough to reject, afterwards became the basis of our present system of electing the Presidents of the United States.

<sup>62</sup>It is very interesting to compare the Preamble of the Constitution of 1776 with the Declaration of Independence, and to see how Jefferson embodied in the Declaration of Independence some of the same thoughts (often in the same words) which are to be found in the Preamble to the Constitution of Virginia.

With reference to suffrage, Jefferson's proposed plan of government favored the extension of the electoral franchise to all free white men over twenty-one years of age who had paid "scot and lot" for two years preceding the election at which they offered to vote.<sup>22</sup> The constitution as adopted, however, simply declared that suffrage should remain unchanged; <sup>23</sup> *i. e.*, it remained as it had been established by the law of 1736 for the counties and towns, and by the respective charters of the city of Williamsburg and the borough of Norfolk.

In 1776, there was no active party in favor of the extension of suffrage, and no one, except Jefferson and Mason, seems to have advocated any change whatever. Had Jefferson been a member of the Virginia Convention, the constitution might have been different. In 1785, the General Assembly extended the right to vote to all who had as much as fifty acres (instead of one hundred) of uncultivated land, but in other respects made no change.<sup>24</sup> In other words, the Assembly adopted a measure similar to the acts of 1762 and 1769 which had been rejected by the King. Suffrage remained, as fixed by the statute of 1785, until the adoption of a new constitution in 1830.

This, in brief, is the history of suffrage from 1619 to 1830, so far as concerns the elections of members to the General Assembly, and, after 1788, members of Congress and Presidential Electors.

The city of Williamsburg and the borough of Norfolk were peculiar anomalies. As has been seen, both of these

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<sup>22</sup> Ford's Writings of Jefferson, vol. ii, p. 14.

<sup>23</sup> Va. Constitution, Henning, vol. i, p. 52. Under the constitution the State remained practically as aristocratic in its government as it had been under the government of England. The electors still voted simply for members of the General Assembly, but the old Council as a legislative body was superseded by the Senate, and the members of this newly established branch were elected by popular vote. No voice was given to the people in their local government. This was left in the hands of the Governor, who was elected by the General Assembly.

<sup>24</sup> Henning, vol. xii, p. 120.

places had special privileges of suffrage which, however, had reference to elections held within their charter limits, yet a freeholder of Norfolk who had voted in the election in the city could, also, because of his freehold in the city, vote in the elections in Norfolk county, and a freeholder of the city of Williamsburg had the same privileges with reference to the county of James City.

Up to 1851 every citizen had the right to vote in every county in which he had a freehold, but a citizen was never allowed to have two votes for the same freehold, except in the cases of Norfolk and Williamsburg. This anomaly existed because Williamsburg and Norfolk were granted by their charters the privilege of sending one delegate each to the General Assembly at the time when the suffrage laws allowed freeholders in a town the privilege of voting in the county in which that town was located. This was not altogether agreeable to the people of Virginia. An act passed in 1787 stated that, if at any time thereafter any town might receive the privilege of electing a delegate to the General Assembly, the citizens of the said town were to be allowed no vote in the county in which the town was located.\* Thus, a freeholder in a town would be entitled to only one vote, but the law expressly stated that Williamsburg and the borough of Norfolk were not to be affected. In 1788, when the General Assembly assigned one delegate to the city of Richmond, it declared that the freeholders of Richmond could not have a voice in the elections in Henrico county.\*\* Not until after the adoption of the Constitution of 1829-1830 and the passage of the election law of 1831, were the freeholders of Williamsburg and the borough of Norfolk deprived of their votes in the counties.†

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\* Hening, vol. xii, p. 643.

\*\* Ibid., vol. xii, p. 722.

† Code (1849), p. 38. Williamsburg was deprived of its representation, and its citizens, with those of York and James City counties, had one delegate. Norfolk city retained its delegate, but no voter could exercise the franchise except in the city, hence could not vote for the delegate from Norfolk county. Of course, those who



Suffrage in Virginia in colonial days was indeed peculiar. As has been shown, in the counties it was perfectly uniform, while in Williamsburg and Norfolk there was an electoral qualification different from the county qualification. These qualifications applied to the elections of members of the General Assembly and to Federal elections. This lack of uniformity was due to the fact that the charters of Williamsburg and of the borough of Norfolk were granted in the reigns of George I and George II—a time when it was an English principle to grant more liberal rights to the inhabitants of a town than of a county. But, remarkable to say, after the rejection of the British government, the General Assembly, when it established towns, often provided for special qualifications which were to be required in those elections which referred to the affairs of the towns.

In 1779, when Alexandria was incorporated, all freeholders or housekeepers who had resided in the town for twelve months were allowed to vote in municipal elections. Charters with like provisions were granted to Winchester, to Fredericksburg and to Staunton.<sup>8</sup> In 1782, Richmond was chartered. The franchise in municipal elections was conferred upon every white citizen who had resided in the city for three months and owned property, real or personal, to the value of one hundred pounds. Non-resident freeholders of the city were also given franchise in city elections.<sup>9</sup> The charter of Petersburg<sup>10</sup> was, as far as suffrage was concerned, like that of Richmond. In 1788, when Richmond was allowed a member in the House of Dele-

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voted in Norfolk or Williamsburg because of any "visible" estate of the value of 50 pounds (according to the act of 1818, \$166.66), or those who voted because they had served an apprenticeship of five years and were housekeepers, had never had the right to vote in the county elections. In other words, a premium had been put on a freehold voter in Norfolk and Williamsburg, just as is the case in the present constitution of Belgium.

<sup>8</sup> Hening, vol. x, pp. 172, 440; (New Series) vol. ii, p. 335.

<sup>9</sup> Hening, vol. xi, p. 45.

<sup>10</sup> Ibid., vol. xi, p. 383.

gates, only freeholders were allowed to vote for the representative, who had to be a freeholder." Towns known as "unincorporated towns" had trustees named in the acts of establishment, and vacancies among such trustees were filled, sometimes by vote of the freeholders and housekeepers, and sometimes by the vote of the freeholders only." Some towns were established without any mention of the suffrage qualification for town elections. By an act of 1819 it was provided that in this case freeholders only, just as in the general elections, were to be given the franchise."

Thus we see that Alexandria, Fredericksburg, Winchester and Staunton had one system, that Richmond and Petersburg had another, and that the "unincorporated towns" had still another. Other instances might be given, but those already cited are sufficient to show the confused state of suffrage. Nearly every town had a distinct qualification for its municipal electors, while those who were municipal electors were not entitled to vote in the general elections, unless freeholders, except in Williamsburg and Norfolk.

Before 1830 the franchise granted for town elections was more liberal than for the general elections. By the constitution of 1830, the qualifications for the general elections having been somewhat reduced, the differences were not so glaring, except in Richmond and Petersburg, where the franchise for general elections was more liberal than for municipal elections. In 1850, when suffrage was extended to all male whites over twenty-one years of age, the restrictions on suffrage in the municipal elections of Richmond were beyond all reason; so, in 1852, the Richmond charter was amended whereby suffrage became uniform in the city, and all who voted in the general elections also voted for the city officials."

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"Hening, vol. xii, p. 722.

"Ibid., vol. v, p. 119; vol. x, p. 236; Code (1819), vol. ii, p. 319.

"Code (1819), vol. ii, p. 319.

"Charter of 1852, §8.

In spite of the different changes and the peculiar anomalies of the electoral franchise, freehold suffrage, on the whole, prevailed in Virginia up to 1830. The system restricted very greatly the franchise, but yet there is good evidence that it was more liberal and more democratic than it had been in New England during the colonial period.<sup>a</sup> Aliens easily became citizens,<sup>a</sup> and freeholds could be obtained by a small outlay.

The usual voting population numbered about six per cent. of the whites;<sup>a</sup> but in some counties of the Commonwealth, especially in the western part of the State where the freeholds were small and a large per cent. of the inhabitants were landowners, the voting population was often as great as nine per cent. of the whites.<sup>a</sup> Under the present system of free manhood suffrage, from fifteen to twenty per cent. of the population can vote.<sup>a</sup> Though suffrage in Virginia was more liberal than in New England in the colonial days; yet, when compared with our modern democratic system,

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<sup>a</sup> Jameson: Nation, April 27, 1893; Lyon G. Tyler: William and Mary Quarterly.

<sup>a</sup> In early days aliens became citizens of Virginia simply by taking oaths of allegiance and of supremacy, and after 1705 by taking such oath as was used by the English Parliament. In 1783, it was enacted that an alien became a citizen as soon as he took the oath of allegiance to the commonwealth. If qualified with a freehold he could vote, but to be elected to an office he must have been a resident for at least two years and have intermarried with a Virginia family, or have property worth more than 100 pounds. Hening, vol. ii, pp. 289, 308, 339, 400, 447, 464; vol. iii, p. 434; vol. v, p. 58; vol. xi, p. 323; vol. xii, p. 267.

<sup>a</sup> Jameson: Nation, April 27, 1893. In the presidential election of 1800 the contest was hot between Jefferson and Adams. The total vote was 27,335, and the white population was 514,280, which shows that about 5¼ per cent. of the white population voted. (Enquirer, Nov. 21, 1800; Census, 1800.)

<sup>a</sup> See election returns in Enquirer, May 11, 1813, and compare with the Census of 1810.

<sup>a</sup> Documents of Convention, 1867-68, Document 16, p. 122.

In 1892, the vote cast in Virginia was 292,146, and the census of 1890 shows a population of 1,665,980 (Dispatch, Nov. 23, 1892, and Census of 1890).

+ it was restricted to an aristocracy. Only about one in four, or at most one in three, of the free white men of Virginia was a landowner; therefore, as many as three-fourths or two-thirds of the freemen of the State were disfranchised. It does not seem that the Virginians of 1776 understood the meaning of their famous Declaration of Rights which declared that "all men are by nature equally free and independent," and they undoubtedly believed that no man could give "evidence of permanent common interest with, and attachment to, the community" unless he owned real estate. The economic conditions then existing in the State explain this belief.

## CHAPTER II.

### STRUGGLE FOR THE EXTENSION OF SUFFRAGE.

In colonial days freemen who were deprived of the suffrage were constantly clamoring for the privilege. This statement is proven by the reports of the contested elections going as far back as 1744. In nearly every case the illegal votes which were thrown out in the settlement of the contest had been cast by non-freeholders. In some counties the people practically made laws to regulate their own suffrage. In such counties where the pressure was sufficiently great, the sheriffs were accustomed to allow the franchise to non-freeholders, provided no objection was raised by the candidates.<sup>1</sup> Surely this statement proves that there was a strong democratic tendency in the colony of Virginia in favor of the extension of suffrage. Nathaniel Bacon, Virginia's first rebel, was also Virginia's first champion of the rights of freemen. One century later, we find Virginia's great democrat, Thomas Jefferson, playing the same rôle. In 1783, appeared the book of "Notes on Virginia," in which Mr. Jefferson argued that freehold suffrage was entirely contrary to the principles of the free government. He asserted that the majority of the people who paid the taxes and fought for the State had no voice in its government, that the roll of freeholders who could vote did not contain half of the freemen assessed for taxes, or enrolled

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<sup>1</sup> See contested election cases of John Tabb vs. Wm. Wager, Elizabeth City (Journal, 1776, April 8). In this election, 10 non-freeholders had been allowed to vote. In the case of Blagrove vs. Pettus, Lunenburg county, out of a vote of 372, forty-two freemen had voted (Journal, March 12, 1772).

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Jefferson pleaded for a . should establish in Virginia ent. He prepared a draft of affrage clause proposed that idents in Virginia one year, int of property, real or per- in the militia, should have the m Mr. Jefferson's suggestion, ged the General Assembly to constitutional convention, and,

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among other matters of importance, he mentioned that the bad state of suffrage should be rectified.<sup>2</sup> This movement failed and we hear little more of suffrage until the beginning of the 19th century. In 1802, William Munford,<sup>3</sup> a prominent State Senator, addressed a circular letter to his constituents advocating the extension of suffrage to all white freemen. The "Gazette" was a strong Federalist paper which was opposed to anything which savored of Jeffersonianism. It claimed that Munford's proposition was nothing more than a move on the part of the Republican party, headed by Jefferson, to make sure of retaining the reins of government in their own hands. In other words, that here was a conspiracy to extend suffrage to all freemen with the hope that they would always express their gratitude by supporting the party which had given them the privilege.<sup>4</sup> The theories of Mr. Munford were regarded as "visionary." However, through the efforts of Mr. Mun-

<sup>2</sup> Notes on Va. (ed. 1801), p. 408. This was his second draft of a constitution.

<sup>3</sup> Madison's Works, vol. i, p. 83.

<sup>4</sup> This was William Munford, of Mecklenburg county. He was the translator of Homer, and for a long time clerk of the House of Delegates. William Munford was a prominent lawyer, a noted orator, and at one time a member of the Executive Council of Virginia. His circular letter was addressed to the citizens of Mecklenburg, Lunenburg, Brunswick and Greensville (*Enquirer*, Feb. 1, 1806; *Gazette*, Feb. 23, 1803; *Recorder*, March 6, 1802).

<sup>5</sup> *Gazette*, Feb. 23, and July 20, 1803.

ford, a bill was introduced in the General Assembly of 1802-3, providing that a constitutional convention should meet, one object of which would be the extension of suffrage to all freemen. This measure met with little support and was defeated by a large majority. A letter published at this time in the "Alexandria Advertiser" shows the spirit of those opposed to a wider franchise. In speaking of the extension of suffrage, it said: "Such has been the folly and weakness of the people of Maryland that they have carried the right of suffrage so far, that their very wheelbarrow men may be carried to vote by an *habeas corpus*, and afterwards returned to their daily employment imposed on them for some felonious act. Great God! is it possible that a State can exist long under such a government? We have to bless ourselves in Virginia that the right of suffrage has saved us in some degree from the calamity of democracy, alias mobocracy. I am well informed that the Legislature of Maryland would disgrace any country; the members of their Assembly, Senate and Council are neither men of education nor common sense, scarce one capable of draughting a law. What has been the consequence of such characters getting into the Assembly? Why, they have expelled worth and talent, and the people of Maryland have submitted to men elected by free negroes, wheelbarrow men, etc. Can it be expected that men of worth and talents would mix or keep company with such a set of men, elected by such a crew?"\*

In quoting this article the "Gazette" warned the people of Virginia to profit by the conditions in Maryland and to beware of the visionary ideas of Mr. Munford. The desire for reform in Virginia continued to grow, and for several years we find the newspapers discussing questions of reform; among them, the extension of suffrage and the reapportionment of representation were the most prominent.'

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\* Quoted in Va. Gazette, July 20, 1803. This is a much overdrawn account of the state of affairs in Maryland.

' Enquirer, Dec. 29, 1804, has an excellent article signed "C."

In 1806, when the convention question was again brought up in the Legislature, the extension of suffrage was warmly advocated. It was argued that it was a shame to the Commonwealth of Virginia that nine-tenths of the freemen were deprived of suffrage.\* One member went so far as to declare that men thus deprived of their rights were "as much enslaved as beings who inhabit the Turkish Empire. If they enjoy more personal liberty it is because their masters are more indulgent and not that they are less absolute."† It was asserted that the Bill of Rights was violated when men who owned slaves, horses and other personal property, subject to taxation, were refused the privilege of suffrage, though they were as much interested in the community as those owning real estate. Many of them were patriots who had fought and bled for their country, and yet they were not interested in their country because they did not own land. Still the Legislature refused to act, and public sentiment had to grow.

Universal suffrage became a subject for public debate and for all newspaper discussion. The young men of the country were its advocates, so Madison tells us. In judging from the reports of William and Mary College, at that time Virginia's great school of politics, universal suffrage was a favorite theme for the young orators of the country." This appeal for liberty and democracy on the part of the students of William and Mary reminds one of the outbreak in 1848 at the universities of Germany, an outbreak which fostered and cherished the idea of German liberty and nationality.

In 1810 came two appeals to the Legislature. The little

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\* This was too high, as only two-thirds of the freemen were deprived of suffrage.

† Enquirer, Jan. 28, 1806.

" At the commencement of 1808, universal suffrage was advocated by one of the graduates, William Greenhill (Enquirer, July 15, 1808), and again at the commencement of 1812, the same principle was urged (Enquirer, July 14, 1812).



town of Waterford in Loudoun county desired to elect its officers by the vote of all the housekeepers in the town instead of by the vote of freeholders, as was required.<sup>11</sup> A petition was also presented to the Legislature from Accomac county, asking that steps be taken at once to extend suffrage and to procure other needed reforms. This was the day of Napoleonic despotism in France, and a kind of conservative spirit prevailed in all parts of the English and American world. James Monroe, who had been a representative of the American Government in France at the opening of the French Revolution, was at this time a member of the Virginia Assembly. He had seen the evils of universal suffrage in France, and so strenuously opposed any action on the part of the Legislature that the petitions were rejected by a large majority.<sup>12</sup>

The inequality of representation was the burning question at that time, but the extension of suffrage was always warmly advocated. Again, in 1814, another bill for constitutional reform was rejected.<sup>13</sup> The equalization of representation and the extension of suffrage now became the cry of reformers throughout the State. In the summer of 1816 conventions were held at Winchester and at Staunton to discuss questions of reform. The meeting at Staunton was attended by some of the ablest men in the State. Thirty-six counties were represented, twenty-four of which were west of the Blue Ridge and twelve to the east of that ridge.

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<sup>11</sup> Jour. of House of Delegates, Dec. 20, 1810. In this connection attention is called to the special privileges enjoyed in Williamsburg and Norfolk. *Supra*, p. 19.

<sup>12</sup> Va. Convention (1829-30), p. 150. Monroe afterwards changed his mind, and said that it might be expected that universal suffrage would not be a success in France, where the people had been oppressed for ages, but that in Virginia, where the people were accustomed to representative government, no evil could come of universal suffrage.

<sup>13</sup> Va. Convention (1829-30), p. 421. Bill provided for (1) extension of suffrage, (2), reapportionment of representation, and (3) reduction of number of members in the House of Delegates.

At this time a great fight was being waged between Western and Eastern Virginia for the reapportionment of representation in the General Assembly, due to the fact that in proportion to the white population Eastern Virginia had twice as much power in the State government as it should have. The Staunton Convention was therefore called primarily to discuss representation. But as a rule Western Virginians and those in the East who believed in equalizing representation, also believed in free manhood suffrage; so the Staunton Convention declared in favor of (1) apportioning the members of the General Assembly on the basis of the free white population and (2) for the extension of suffrage to all persons giving sufficient evidence of a "permanent common interest with, and attachment to, the community." The memorial prepared by this Staunton meeting was referred to the General Assembly, but, again, the reforms asked for were denied. It is well to remember, however, that in February, 1817, a bill to call a constitutional convention to equalize representation and to extend suffrage passed the House of Delegates but was rejected by the Senate.<sup>14</sup>

For about seven years no decided effort was made to call a constitutional convention, but the newspapers in nearly every issue during this period had an article advocating reform of some kind in the government. Frequently the suffrage was the subject of discussion.<sup>15</sup> In some parts of

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<sup>14</sup> Jour. of House of Delegates (1816-17), p. 180; Enquirer, Jan. 14 and 25, 1817. The bill followed the wording of the memorial, and passed the House of Delegates by the vote of 79 to 73. A majority of those voting for it were from the western part of the State, but some of the eastern members supported it from the desire to change the suffrage, which was as bad as the feudal system which during the Dark Ages "confirmed all the powers to the barons." So the Virginia government granted all the power to freeholders, and was an oligarchy.

<sup>15</sup> The Enquirer, of Dec. 4, 1824, has a fine article on the question. The argument was that the whole government of Virginia was in the hands of a minority, and that people were often taxed without being allowed any voice in the government. The article proposed

the country the desire for its extension was so great that candidates for the General Assembly, by a common agreement, allowed freemen to vote in the elections, and the sheriff recorded their votes unless challenged by the candidates." In 1824, Jefferson, an old man in retirement at Monticello, gave his views upon the subject of the suffrage. He said: "The basis of our constitution is in opposition to the principle of equal political rights, refusing to all but freeholders any participation in the right of self-government." According to Jefferson, the exclusion of the majority of the freemen from voting was arbitrary and "a usurpation of the minority over the majority." At the session of the General Assembly of 1824-5 a convention bill was again introduced. It passed the House of Delegates by a vote of 105 to 98 but was rejected in the Senate by 13 to 11." As in all previous convention bills, one of the reforms desired was the extension of suffrage.

The action of the General Assembly aroused the people in favor of reform to still more vigorous action. A great meeting was called at Staunton in July, 1825. One hundred delegates appeared, some of the most distinguished men of the State. They were encouraged by nearly all of the leading papers of the State, which said that reform in the government was absolutely necessary. They discussed the inequity of representation, and the injustice of freehold suffrage, and petitioned the General Assembly to call a constitutional convention at once to redress these griev-

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to allow every white man to vote for members of the House of Delegates, while only freeholders could vote for senators.

"Enquirer, Feb. 14, 1822.

"Jefferson's Letter, Enquirer, April 27, 1824.

"Enquirer, Feb. 10, 1825. The editor in commenting on the rejection said: "Things cannot always remain as they are. The people will correct them. They will call in yet louder tones for a convention. The present constitution is defective and requires amendment. Such is the language of justice and prudence." The action of the Virginia Senate reminds one of the English House of Lords in its opposition to the Reform Bill of 1832.

ances. Still again the General Assembly declined to call a convention."<sup>19</sup>

For three more years the fight went on with the same result; but, finally, in January, 1828, a bill was passed by the General Assembly to submit to voters of Virginia the question of a convention to reform the constitution."<sup>20</sup> For over twenty-five years the struggle for reform had been waged. During this time the State had gradually divided itself into two sections having in many respects conflicting interests. There was the slave-holding planter in Eastern Virginia and the sturdy mountaineer in Western Virginia. Under the constitution of 1776 Eastern Virginia rightly and justly had the control of the administration; but, as the western section increased in population, it received no additional powers in the government. For these additional rights it clamored unceasingly for twenty-five years. The East, however, opposed any change. The western principles of government called for representation based on free manhood suffrage, while the eastern principles demanded a representative system based on man and property combined, and a freehold suffrage. A constitutional convention could not be called unless a General Assembly approved of it, and, since the eastern section of the State had a large majority in the Legislature, it is plain why it took so long to produce a sentiment strong enough to make the eastern members yield to the cry for reform. Some never did, while others consented to call a convention in order to secure many needed reforms other than the change of representation or the extension of suffrage. Still, when the convention question was submitted to the vote of the people, more than half of the votes in the East declared against the convention, but the almost unanimous vote of the West, together with a small vote of the East, carried the day for the reform convention.

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<sup>19</sup> Va. Convention, 1829-30, p. 82.

<sup>20</sup> Acts of General Assembly, 1827-28, p. 18.

### CHAPTER III.

#### THE DISCUSSION OVER SUFFRAGE IN THE CONVENTION OF 1829-30.

The Convention assembled in the Capitol at Richmond, October 5, 1829. Its ninety-six members were among the most prominent men of the State, and many of them had a national reputation. It is probable that there has never been in the United States a State constitutional convention in which there was so much talent. There were two Ex-Presidents, Madison and Monroe; the Chief Justice of the United States, Marshall; several who were or had been United States Senators, and many who during their lives were members of Congress, or held other posts of honor. This convention has always been regarded as one of the greatest assemblies of intellect ever held on Virginia soil.<sup>1</sup>

Next to representation, suffrage was the most important subject of discussion. The Legislative Committee, of which Mr. Madison was chairman, reported on the question of suffrage.<sup>2</sup> While the reapportionment of representation was for the most part a grievance, for the redress of which the West only clamored, an extension of suffrage, though most strongly advocated by the West, was likewise desired by many in the eastern part of the State. There was a strong sentiment in the city of Richmond for its extension, and, at the very commencement of the convention, Chief-Justice Marshall presented a "memorial from a numerous and respectable body of citizens, the non-freehold-

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<sup>1</sup> For a fuller account of this convention see Chandler's "Representation in Virginia," J. H. U. Studies, 14th Series.

<sup>2</sup> Va. Convention (1829-30), pp. 22, 39, 40.

ers of the City of Richmond.”<sup>a</sup> This memorial is a very long one and sets forth an argument why they should be allowed the rights of suffrage. They claimed that they were passed by as “aliens or slaves, as if they were destitute of interest or unworthy of a voice in measures involving their future political destiny; whilst the freeholders, sole possessors under the existing Constitution of the elective franchise, have, upon the strength of that possession alone, asserted and maintained in themselves the exclusive power of new-modelling the fundamental laws of the State; in other words, have seized upon the sovereign authority.” They appealed to the Bill of Rights, and cited Jefferson as having been a champion of their cause. They denied the assertion that freehold suffrage was a fair criterion by which to judge of merit, but, on the other hand, asserted that it shut out from the affairs of the government some of the most intelligent and meritorious men, whose vocations required no ownership of property. With indignation they had heard that they were too ignorant and vicious to vote; yet in the time of war they had always been called upon to defend the country, and at that time the militia were composed of a large per cent. of non-freeholders. Mr. Mercer presented a memorial to the same effect from a “highly respectable body of citizens in Fairfax county,”<sup>d</sup> and Mr. Anderson another from the non-freeholders of Shenandoah county.<sup>e</sup> These were referred to the Legislative Committee, on the motion of Chief-Justice Marshall, who said that “however the gentlemen might differ in opinion on the question discussed in the memorials, he was sure they must all feel that the subject was one of the deepest interest and well entitled to the most serious attention of this body.”<sup>f</sup> Other memorials were also presented to the convention asking for an extension of the right of suffrage.<sup>g</sup>

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<sup>a</sup> Va. Convention (1829-30), pp. 26, 27.

<sup>d</sup> Va. Convention (1829-30), p. 31.

<sup>e</sup> Ibid., p. 32.    <sup>f</sup> Ibid., p. 32.    <sup>g</sup> Ibid., p. 32.

The Legislative Committee brought in a lengthy report on suffrage which advised that all who then enjoyed the right to vote should continue to exercise that privilege, and that suffrage should be extended to those who possessed freeholds of the value of \$—; to those who owned vested estates in fee, in remainder, or in reversion worth \$—; to leaseholders paying an annual rate of \$—; and to taxpaying housekeepers.<sup>8</sup> The blanks were to be filled by the convention. As soon as the report was taken up for discussion, it became evident that it was not satisfactory to any of the members. Yet the members were so divided in sentiment that it was also seen that no better plan was likely to be adopted. Many resolutions were offered bearing on suffrage. General Robert Taylor of Norfolk presented resolutions in favor of uniform suffrage throughout the State.<sup>9</sup> His idea was to abolish any differences which might exist between the usual regulations governing suffrage and the special charter privileges granted to many of the towns. At the same time he desired that a definite regulation should be adopted which would apply throughout the State. Mr. Fitzhugh of Fairfax desired to simplify the regulations governing suffrage by allowing all freeholders, or householders, having any assessed property (real or personal) of some specified value, the elective franchise.<sup>10</sup> Mr. Alexander Campbell, President of Bethany College, proposed to extend the right of suffrage to "all free white males of twenty-three years of age, born within the Commonwealth and resident therein,"<sup>11</sup> while any one not born in the State could acquire the right of suffrage by

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<sup>8</sup> *Ibid.*, pp. 39-40.

<sup>9</sup> *Va. Convention (1829-30)*, p. 39. Gen. Taylor was not in accord with his constituents, and afterwards resigned his seat in the convention for that reason.

<sup>10</sup> *Va. Convention (1829-30)*, p. 42.

<sup>11</sup> *Ibid.*, p. 43. The term "free white" is to be distinguished from white population, because there were many whites in the State at that time bound for a term of years, and they were not regarded as "free."

a declaration in court of his intention to become a resident of the State. Another proposition was that suffrage be granted to every free white man of the Commonwealth who had resided therein for one year previous to the election, provided he had paid all levies or taxes imposed according to law. A poll-tax of twenty-five cents per annum was to be levied on all white men, and the revenue thus acquired, with an equal amount from the property tax, was to be set aside for "the education of the youth of Virginia."<sup>12</sup>

The most heated discussion of the convention was on representation, but the second most interesting was on suffrage. The men from the western part of the State were anxious for free manhood suffrage, while those from the eastern part were more conservative and cared for very little change in the electoral qualifications. James Monroe declared that he was willing in the extension of suffrage to go as far as the most liberal could desire.<sup>13</sup> Benjamin Watkins Leigh, on the other hand, declared against extension of suffrage, claiming that it would grant too much liberty, and the result would be the liberty of Virginia expiring with excess. In this connection he made use of the following eloquent language: "It has pleased Heaven to ordain that man shall enjoy no good without alloy. Its greatest bounties are not blessings, unless the enjoyment of them be tempered with moderation. Liberty is only a *means*; the end is *happiness*. It is indeed the wine of life; but like other wines, it must be used with temperance in order to be used with advantage; taken to excess, it first intoxicates, then maddens, and at last destroys."<sup>14</sup> John Randolph of Roanoke declared that it was an outrage to the freeholders even to extend suffrage to the housekeepers and to free men over twenty-one years of age. Addressing the President of the Convention, he said: "Sir, I demand as a

<sup>12</sup> Va. Convention (1829-30), p. 44.

<sup>13</sup> Va. Convention (1829-30), p. 150. Monroe explained that he had changed his views since 1810, when he had so earnestly opposed the extension of suffrage.

<sup>14</sup> Ibid., p. 173.



freeholder, in behalf of freeholders on what plea you put them and them only under the ban of this Convention. . . . I will never consent to deprive freeholders of their rights, . . . I will never consent to be an agent in this.”<sup>18</sup> The western people quoted Jefferson as a great advocate of manhood suffrage and said that the government of Virginia was not entitled to the name of a republic. Jefferson had said: “We find no republicanism in our Constitution, but merely in the spirit of our people; but the spirit of our people would oblige even a despot to govern us republicanly. Owing to this spirit and to nothing in the form of our Constitution, all things have gone well.” The western people thought that these conditions ought to be removed and that the people ought to be trusted to govern themselves, but the sage of Monticello had little weight with the Eastern Virginians, especially with those of the type of John Randolph. They practically said, “Let things stay as they are. We are getting on well. Let good enough alone.” Randolph said: “Such is the wisdom of our existing form of government that no proposition can be brought forward with a view to making an inroad that can demand a respectable majority. The lust of innovation has been the death of all republics. All men of sense ought to guard and warn their neighbors against it.” Randolph proposed at one time that the Convention should adjourn *sine die* and give up all intention of changing the constitution of 1776,<sup>19</sup> as it was the best the world had ever seen. The way in which Jefferson’s views were regarded by the East is seen by another extract from Randolph. In replying to a western member, he said: “We are not to be struck down by the authority of Mr. Jefferson. Sir, if there be any point on which the authority of Mr. Jefferson might be considered as valid, it is in the mechanism of a plough. He once mathematically and geometrically demonstrated the form of a mould board which might present

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<sup>18</sup> Va. Convention (1829-30), p. 346.

<sup>19</sup> Ibid., pp. 557, 571, 572, 716.

the least resistance. His mould board was sent to Paris. It was exhibited to all the visitors in the garden of plants and was declared *una voce*—the best mould board that had ever been devised. Sometime after, an adversary brought into Virginia the Carey plough, but it was such an awkward looking thing that it would not sell. At length some one tried it, and, though its mould board was not the one of least resistance, it beat Mr. Jefferson's plough as much as *common sense* will always beat *theory* and *reveries*." This was indeed the feeling of the Eastern Virginian. He believed that democracy was a theory, and that only men of property should be given the franchise. At this time there were in Virginia some 100,000 free white citizens paying taxes to the State, of whom about 40,000 were freeholders and 60,000 were men who owned personal property.<sup>27</sup> The western members made a desperate effort to have suffrage extended to all taxpayers, but the proposition was rejected by the eastern members. The East had sixty members in the Convention, and the West, thirty-six; and, when the vote was taken to extend suffrage even to taxpayers, only a few of the eastern men failed to oppose it. This measure was rejected by a vote of fifty-three to thirty-seven.<sup>28</sup> Had this proposition been carried, 43,000 white men over twenty-one years of age would still have been disfranchised, because they paid no taxes on any personal property. So we see that the western scheme which came nearest to passing would have enfranchised only 100,000 out of 143,000 male whites over twenty-one years of age. At this time Virginia was the only State in the Union out of twenty-four that held exclusively to the freehold suffrage.<sup>29</sup> The advocates of universal suffrage stood no chance with men who believed that landed property was the basis of the State and of wealth, and that, if the wealth of a State is jeopardized, the State will be thrown into confusion. The

<sup>27</sup> Va. Convention, p. 355. The number of free white males over 21 years of age was 143,000.

<sup>28</sup> Va. Convention (1829-30), pp. 350, 383.

<sup>29</sup> Ibid., p. 356.

property of the State must be protected and this can be done only by property qualifications being required of every voter. A proposition was even offered to disfranchise some of the freeholders who already could vote because of fifty acres of unimproved land.<sup>20</sup> It was claimed that many of these small freeholds in West Virginia, of fifty acres of unimproved land were worth, in the mountainous districts, only a few cents and that a specified valuation should be fixed upon the freehold which would qualify a man to vote. The sentiment of the convention, however, was not in favor of disqualifying any who could already vote. The eastern men who controlled the convention practically said, those who could vote ought to continue to exercise the privilege, and that suffrage ought likewise to be extended to all persons having small freeholds with specified value, whether they were two, three, four or five acres, and to leaseholders and taxpaying housekeepers, but there was such a diversity of opinion as to what valuation should be required, that a deal of wrangling occurred before a plan could be agreed upon.<sup>21</sup> The following botch of a plan was finally adopted and embodied in the constitution: <sup>22</sup>

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<sup>20</sup> *Ibid.*, pp. 349, 346.

<sup>21</sup> Va. Convention (1829-30). Mr. Wilson, of Monongalia, proposed the extension of suffrage to all taxpayers (p. 350). Benjamin Watkins Leigh did not desire to extend suffrage beyond leaseholders, and desired to keep the franchise from the hands of the housekeepers. This was defeated by a vote of 51 to 37 (pp. 393, 432). There were in Virginia at this time about 30,000 men who paid a revenue tax, but were not freeholders. Doddridge proposed that the suffrage be extended to these, but the motion was rejected by a vote of 48 to 44 (p. 441). This close vote shows that there was a pretty strong desire to give a voice in the government to all who paid a revenue tax. They were the western men reinforced by about a dozen of the eastern members. The ultra eastern men tried to prevent the extension of suffrage to leaseholders, but lost by a vote of 68 to 28 (p. 638). They also tried to exclude from the electorate housekeepers who were assessed for the revenues of the State, and had actually paid taxes. This motion was also lost, the vote standing 56 to 40 (p. 641).

<sup>22</sup> Va. Convention (1829-30), p. 900. By this constitutional provision we find the following qualifications for voters: (1) A 25-acre freehold of improved land acquired before 1830; (2) a 50-acre free-

“ Every white male citizen of the Commonwealth, resident therein, aged twenty-one years and upwards, being qualified to exercise the Right of Suffrage according to the former Constitution and laws; and every such citizen, being possessed, or whose tenant for years, at will or at sufferance, is possessed, of an estate of freehold in land of the value of twenty-five dollars, and so assessed to be if any assessment thereof be required by law; and every such citizen, being possessed, as tenant in common, joint tenant or parcener, of an interest in or share of land, and having an estate of freehold therein, such interest or share being of the value of twenty-five dollars, and so assessed to be if any assessment thereof be required by law; and every such citizen being entitled to a reversion or vested remainder in fee, expectant on an estate for life or lives, in land of the value of fifty dollars, and so assessed to be if any assessment be required by law (each and every such citizen, unless his title shall have come to him by descent, devise, marriage or marriage settlement, having been so possessed or entitled for six months); and every such citizen, who shall own and be himself in actual occupation of a leasehold estate, with the evidence of title recorded two months before he shall offer to vote, of a term originally not less than five years, of the annual value or rent of twenty dollars; and every such citizen, who for twelve months next preceding has been a housekeeper and head of a family within his county, city, town, borough or election district where he may offer to vote, and shall have been assessed with a part of the revenue of the Commonwealth within the preceding year, and actually paid the same—and no other persons—shall be qualified to vote for members of the General Assembly in the county, city, town

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hold of unimproved land acquired before 1830; (3) a \$25 freehold; (4) a \$25 joint tenantry; (5) a \$50 reversion; (6) a five-year leasehold of annual rental value of \$20; (7) a tax-paying housekeeper, being the head of a family.

or borough, respectively, wherein such land shall lie, or such housekeeper and head of a family shall live. And in case of two or more tenants in common, joint tenants or parceners, in possession, reversion or remainder, having interest in land, the value whereof shall be insufficient to entitle them all to vote, they shall together have as many votes as the value of the land shall entitle them to: and the Legislature shall by law provide the mode in which their vote or votes shall in such case be given: *Provided, nevertheless*, That the right of Suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier, seaman or marine, in the service of the United States, or by any person convicted of any infamous offence."

With such a clause regulating suffrage well might Randolph have claimed that the convention was not capable of amending the Constitution of 1776 and that their work would not stand for more than twenty years<sup>22</sup> (a true prophecy). The work of this convention is a clear demonstration of the fact that it is not always the greatest statesmen and the most distinguished men who are capable of forming general principles upon which government should be based. As a rule the most successful statesman is the one who performs specific acts. Of such eminent statesmen this convention was composed. Jefferson was a statesman of a different kind. In dealing with a specific case he often failed, but in forming general principles he was the greatest master America has ever produced. Though the convention had agreed upon constitutional regulations for suffrage which the greatest constitutional lawyers, Chief-Justice Marshall not excepted, could not interpret, something had really been accomplished towards extending suffrage. The granting of suffrage to leaseholders, and housekeepers who had paid taxes, was some advance from the freehold system towards a democracy. Just to what extent

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<sup>22</sup> Va. Convention (1829-30), p. 790.

the electorate had been increased it is difficult to determine. In 1828 the vote on the convention question was 38,780.<sup>24</sup> All these were, of course, freeholders. The new constitution by a special provision was submitted for its ratification to all who would be qualified to vote under the new constitution and the vote cast was only 41,618.<sup>25</sup> This was probably not a full vote, but on the basis of these two elections we are justified in saying that suffrage had not been extended very liberally; and that, while under the old constitution two-thirds of the free white men over twenty-one years of age could not vote,<sup>26</sup> that now at best not more than half of the freemen could exercise that privilege.

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<sup>24</sup> Va. Convention (1829-30), p. 379.

<sup>25</sup> Ibid., p. 903.

<sup>26</sup> Ibid., p. 379. The total number of freemen over 21 years of age was 143,000, from which about 10,000 ought to be deducted as paupers, and, if we suppose that 20,000 voters failed to exercise the right, we are still justified in our conclusion.

## CHAPTER IV.

### STEPS TO FREE MANHOOD SUFFRAGE.

The convention of 1829-30 had been a failure in so far as reform was concerned. Virginia's great men had shown their incompetency to frame a constitution which would be lasting. The inequality and inequity of representation had been only partially removed, and no constitutional basis for future reapportionment had been established. Suffrage had been extended to but half of the freemen. Many other reforms, such as we now think are the very essentials of a democracy, had likewise been rejected, such as voting by ballot, election of governors by the people and the election of all local officers by the people of the district. Eastern Virginia members believed in a deep-dyed aristocracy, and Eastern Virginia ruled the State.

But to return to suffrage, the interpretation of the clause regulating suffrage as embodied in the new constitution was very doubtful. In the General Assembly of 1831-32, there was quite a number of contested election cases, and in trying to determine the legal and illegal votes, the House found in many cases that it was almost impossible to decide. Often the Committee on Elections reported that certain votes were illegal, and the House would reverse the decision, and *vice versa*. The clause on suffrage in the constitution was so badly stated, that the House appointed a special committee with authority to prepare an explanatory bill.<sup>1</sup> The problem was too knotty for the committee, and

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<sup>1</sup> Journal of House of Delegates (1831-32), p. 58, and Document No. 13. For instance, the right of suffrage was granted a man owning an interest in any estate, provided his interest was assessed at \$25, if the assessment was required by law. Such a case was found, but no assessment had been made. It was finally decided that such a vote was illegal (Journal of 1838, p. 55).

after much debate it was decided to leave the matter as it was, thus necessitating that all future General Assemblies, as best they could, would have to interpret the constitution. Truly, it was a bad state of affairs when we remember that in one year after the adoption of the new constitution, the General Assembly found itself unable to explain the constitutional provisions regulating suffrage.

Before 1830 elections had taken place at the county court houses on court days, which meant that elections in some counties were at one time and in others at still another time. After the adoption of the new constitution it was provided that the elections should be held in all parts of the State on the same day. Before 1830 a man voted in as many counties as he had freeholds, and, as election days were different, it was very easy for him to cast his vote wherever he held real estate. It was expected that by having a specified time for elections throughout the State, that double, treble and sometimes quadruple voting would be prevented, but yet we are told that many men were accustomed between 1830 and 1850 to vote in two or three counties by voting in the morning in one county, at noon in another and late in the afternoon in still another. The writer knows of a man who, in a very heated campaign, voted in Caroline, Spotsylvania, Stafford and Orange by riding and driving rapidly from one precinct to another. In the newspapers, about 1840, we find some considerable complaint of this double voting. It was believed to be in opposition to the spirit of the constitution.<sup>2</sup> By double and treble voting, the towns could control the counties around them. Many citizens of the towns would buy freeholds worth \$25.00 in the adjoining counties. They would vote in the towns in which they resided and then hurry into the counties to vote. Richmond<sup>3</sup> could control the delegates from Hanover, Henrico,

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<sup>2</sup> Enquirer, May 15, 1840.

<sup>3</sup> Enquirer, April 27, 1841. Cold Harbor was the place at which the Richmond voters concentrated to control the elections in Hanover. It was said that a tract of land known as "Sydnor's



and Chesterfield. Fredericksburg could control those of Spotsylvania and Stafford; Alexandria, those from Fairfax; and Norfolk City, those in Norfolk and Princess Anne counties.

By 1842 another constitutional convention for reform was advocated. As usual, Western Virginia led in the movement. The Legislature at the session of 1841-42 had failed to reapportion representation throughout the State.<sup>4</sup> According to the census of 1840, the West had a white population of 371,570 and the East a white population of 369,390, yet a House of Delegates of 134 members was distributed so unequally, that the West had only fifty-six, while the East had seventy-eight members. So the desire for a constitutional convention on the part of the West was primarily to reform representation, but at this time meetings<sup>5</sup> were being held in many parts of Western Virginia, asking for a complete change in the constitution so that representation might be properly reapportioned, and also asserting that the governor and all State officials and county officials ought to be elected by the people, and that the right of suffrage ought to be extended to every white man over twenty-one years of age. Even the people of the eastern part of the State, belonging to both the Democratic and the Whig parties, began to realize the undemocratic system of suffrage, and some advocated a convention to cut off double voting, to make it impossible for a man to vote except in the district where he resided. Some eastern people actually began to believe that it would be a good thing to have free manhood suffrage.<sup>6</sup> The "Enquirer" took up the western cry, advocating many reforms and especially a change in suffrage. This newspaper, though the leading organ of Eastern Virginia, asserted that no one understood the constitutional right of suffrage, that no two lawyers would agree about it, that no two Legislatures had

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Tract" was divided into at least twenty-five small freeholds owned by Richmond voters.

<sup>4</sup> Enquirer, Dec. 5, 1844.

<sup>5</sup> Enquirer, Aug. 19, 1842.

<sup>6</sup> Enquirer, Dec. 7, 1844.

decided, or would decide, in the same way, questions referred to them concerning the suffrage, and that in some counties one construction was put upon the constitution, and in others, still another. Because of these difficulties much fraud and deception were being practiced in the elections.<sup>7</sup> In the newspapers of the day many articles were written trying to explain who could and who could not vote.<sup>8</sup> One writer asserted that "the constitutional provision regulating the right of suffrage has no prototype in any institution of civil government that the world ever saw. *No one* can understand it." Complaint was also made that there was a system of manufacturing votes for party purposes in vogue in many parts of the State.<sup>9</sup> In an important election in Hampshire county, we are told that 295 such voters were made. All of these men contracted for small freeholds before the election, paid no money on them and gave them up after the election. This system of manufacturing votes, together with the difficulty of interpreting the constitution, made doubtful from five to ten per cent.

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<sup>7</sup> Enquirer, July 22, 1845.

<sup>8</sup> Enquirer, April 25, 1843. The most knotty question to decide was what was meant in the constitution by a housekeeper who was assessed a part of the taxes being allowed to vote. A man who kept a tavern, for instance, was a housekeeper, and paid a license, but was this an assessment? Some claimed that those who were housekeepers and paid a license were entitled to vote, but the decision of the General Assembly in contested elections was that an assessment was a tax on property, while a license was a tax on a privilege.

<sup>9</sup> Enquirer, Sept. 30, 1845. According to a decision of the House of Delegates in 1838, a man could vote in virtue of a freehold which he had bought on time, provided that the man from whom he had purchased it, certified that it was a *bona fide* sale (Journal, 1838, p. 57). This, of course, made it possible for unscrupulous persons to make a great number of votes for party purposes. It was also possible for a man to take a lease for five years, two months before an election, for such estate as he was then occupying, and, if the annual rent was \$20, he could vote because of it. After the election he could then be relieved of his lease. There were other ways, too, but these instances are enough to show how badly the constitution was framed.

of the votes cast at every election.<sup>10</sup> Many contests, therefore, ensued, and much valuable time was consumed by the Legislature in discussing and deciding these contests.

With such a state of affairs, it was but natural that a sentiment began to grow in Eastern Virginia in favor of a change in suffrage, while opposed to a change in representation. Many of the Eastern Virginians advocated free manhood suffrage because it was the only system, as they claimed, capable of getting the people out of the tangle into which the Constitution of 1830 had ensnared them. There was great need of a constitution in which the right of suffrage would be so plainly described that no misunderstanding could possibly arise.<sup>11</sup> Nothing but free white manhood suffrage would suit the conditions. The people of Hanover and Henrico counties were much disturbed over the system of double voting. The citizens of Richmond were accustomed to vote in these counties because they had deeds in their pockets for land which they had never seen.<sup>12</sup> In many parts of the State public meetings were held denouncing the existing conditions and advocating free manhood suffrage.

By 1846 every observant politician became aware of the fact that another constitutional convention was near, and that the East would be willing to accept universal manhood suffrage.<sup>13</sup> The great question which concerned the eastern politician was how to hold a convention and regulate suffrage and not to produce a great deal of trouble over representation. For three years no action was taken with reference to calling a convention.

In 1849 the people all over the State, and especially those of the East, demanded that the Legislature should submit to the vote of the people the question of calling a consti-

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<sup>10</sup> Jour. of H. of Del., 1831, Doc. No. 13; Journal, 1838, p. 70; Journal, 1845-46, Doc. 19, and Doc. 42; Jour., 1844-45, Doc. 27 and Doc. 52.

<sup>11</sup> Enquirer, Oct. 10, 11, 1845.

<sup>12</sup> Enquirer, June 2, 1846.

<sup>13</sup> Enquirer, Dec. 15, 1846, Report of H. of Delegates.

tutional convention. The eastern people said that it was absolutely necessary to settle the question of suffrage, if nothing else," and Governor Floyd in his message to the General Assembly advised a convention at once to regulate suffrage." He said that the then existing system was a most glaring wrong and that Virginia, the home of democracy, ought to have a democratic franchise, namely: white manhood suffrage. In February, 1850, the General Assembly passed a bill to take the vote of the people for or against a convention." Examination of the discussion which took place concerning the bill shows that those principles of reform which had been advocated by the western members of the Convention of 1829-1830, namely: the election of State and county officers by the vote of the people and the extension of suffrage to all male whites over twenty-one years of age, were now approved of by most of the members from the East; but the East was not willing to concede a convention organized on the basis of the white population, neither was it willing that a convention should be called with the intention of equalizing representation. The West, while anxious for other reforms, wanted first of all to have representation equalized for two reasons: (1) because to it the inequality of representation was the most glaring evil of our government, and (2) because if the convention should adopt all of the reforms for which the West had previously stood, excepting the equalization of representation, it would never be possible to bring about a reform in representation. Since the East was unwilling to grant the white basis to the West, the members from that section were, for the most part, opposed to the convention. The state of affairs was now peculiar.

The western people who had first of all desired a convention voted against the measure, while the eastern members voted for it, still some of the western members were

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<sup>16</sup> Enquirer, Dec. 4, 1849.

<sup>17</sup> Governor's Message: Jour. of House of Delegates.

<sup>18</sup> Enquirer, Feb. 12, 19, 1850.

willing to have a convention in spite of the fact that their basis of representation was not acknowledged in the organization of the convention."<sup>17</sup>

In April, 1850, the convention bill was submitted to the vote of the people, and, though many reforms were proposed and needed, all of which reforms the West believed in, twenty-nine out of the forty-three counties west of the Alleghany Mountains cast large majorities against the convention, because representation based on white population was not an acknowledged reform which the convention should make. All of the western counties between the Blue Ridge and the Alleghany, and all of the eastern counties except two, gave majorities for the convention bill, which in spite of the opposition of the trans-Alleghany counties, was ratified by a large majority."<sup>18</sup>

In August the election of members to the convention was to take place; so, between April and August of 1850, the newspapers were filled with discussions of what the convention should accomplish. The following reforms were proposed: (1) biennial sessions of the Legislature, (2) election of the governor by the people, (3) election for limited terms of all judges, (4) reapportionment of representation, (5) free manhood suffrage, (6) taxation *ad valorem*, (7) restriction of the power of the Legislature to increase the State debt, (8) establishment of a public school system, and (9) the election of county officers by the people."<sup>19</sup> In nearly every newspaper was a letter from some one announcing his candidacy for a seat in the convention, and, on all of the proposed or demanded reforms, a large majority of the candidates declared their views.

<sup>17</sup> For a fuller account see my paper on Representation (J. H. U. Studies, 14th Series); also examine Enquirer, Dec. 21, 1849; Jan. 22, Feb. 12, 19, 26; March 1, 8, 15, 1850. When we consider the history of the State, it looks peculiar to see the West opposing a convention. This would not have been but for the fact that it was believed that the East intended to force upon the West the mixed basis of representation.

<sup>18</sup> See Returns of Vote in State Papers of 1850.

<sup>19</sup> Enquirer, March 20, 1850.

Six of the nine proposed reforms, as a rule, were accepted; but many were opposed to the election of judges by the people, while the views on representation were many and varied. On a whole the people in Eastern Virginia favored the mixed basis, while those in the West favored the white basis. Only one Eastern Virginian announced that he favored the white basis. This was Henry A. Wise of Accomac, and he was called a modern Jack Cade and a traitor. With reference to suffrage all the candidates in the West and most of those in the East expressed themselves in favor of white manhood suffrage. Some of the eastern men, however, wanted to get back to the old freehold system<sup>20</sup> as it had existed before 1830, while one or two expressed themselves in favor of an educational qualification;<sup>21</sup> yet a majority of the people of the State had undoubtedly made up their minds in favor of the extension of suffrage to all free whites over twenty-one years of age.<sup>22</sup> So at last, nearly twenty-five years after the death of Jefferson, the people of Virginia had come to accept his principle of suffrage, a principle which as early as 1776 he had advocated and which it took seventy-five years for Virginia to accept. The Virginia people were very conservative, and, though claiming to be democratic, were still aristocratic. And it is yet a moot question in Virginia whether, after all, the old Virginia democratic aristocracy was not right, and that the best and safest government is that which gives the suffrage to an enlightened property-holding class.

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<sup>20</sup> Whig, June 7, July 30, 1850. The Whig advocated referring to the people the question of suffrage, and to allow them to decide between a freehold suffrage, or free manhood suffrage. The editor preferred the freehold system.

<sup>21</sup> Whig, June 21, 1850. The plan was to establish a public school system and to require every voter to read and write. The assertion was made that there was more ignorance in Virginia than in any other State.

<sup>22</sup> Enquirer, April 18, 1850; Whig, May 31; June 4, 7, 21; July 4, 9, 16, 17, 19, 23, 30; August 6, 1850.

## CHAPTER V.

### THE ESTABLISHMENT OF UNIVERSAL WHITE SUFFRAGE.

The members of the constitutional convention assembled in Richmond, October 14, 1850. Of the 135 members, six had been members of the convention of 1829-30. The convention was organized by electing John Y. Mason as president. After a session of a few days it adjourned to await the census of 1850 which at that time had not been made public. It reassembled on the 6th of January, 1851, and remained in session until August 1st. This convention is known in Virginia history as the "Reform Convention," because it overthrew the aristocratic principles on which the government of Virginia had previously been organized. The battle in this assembly was over the question of the basis of representation, and the debate which took place upon this subject consumed most of the time and attention of the convention.<sup>1</sup> Over this question the convention came near splitting. The western counties spoke of separation and the organization of a new State west of the Alleghany. The Eastern Virginians were likewise so determined on their principle of representation, that in many sections there was a feeling in favor of the division of the State. After many severe encounters, some of the Eastern Virginia members surrendered to the West, and adopted a compromise basis of representation. Those members from the East who voted for this compromise were branded by the other eastern members as base "Judeans" and "vile

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<sup>1</sup> For a full account of the proceedings of the convention on the question of representation, see my paper on "Representation in Virginia" (J. H. U. Studies, 14th Series).

traitors." The compromise basis which was so distasteful to the East was the recognition, to a certain extent, that every voter should have the same voice in the State government. The House of Delegates was apportioned on the white basis, and the West received a majority of the members. The mixed basis, however, was recognized in the apportionment of the members for the Senate, so that in this body the East had a majority.

Next to representation, the question of suffrage was the most important, and this created a lively and interesting debate. From the beginning it was evident that suffrage would be greatly extended, but to just what extent it was not certain. As usual, the motion for its extension came from the West. Mr. Waitman T. Willey offered a resolution that suffrage should be extended to every free white man of the age of twenty-one and upwards.<sup>3</sup> The question of suffrage was then referred to a special committee which reported February 4, 1851.<sup>4</sup> As made, the report advocated allowing the franchise to every male white over twenty-one years of age, provided he had been a resident of the State for two years, and of the county or town or city where he offered to vote, for one year, but no person in the United States naval or military service, because he was stationed in the State, no pauper, no idiot, no insane person, no person having been convicted of an infamous crime or of bribery in elections, or of voting fraudulently, and no naturalized citizen of the United States who had not taken the oath of allegiance to the State, was to be given the franchise in Virginia.<sup>4</sup> A substitute was offered that only freeholders whose property was worth at least \$25.00, and residents who had been assessed with a part of

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<sup>3</sup> Journal of Convention, 1850-51, p. 46. Mr. Willey died only recently at a very old age. He was probably the longest survivor of the members of this convention.

<sup>4</sup> Journal of the Convention, p. 58. The committee consisted of sixteen, of whom Joseph Johnson, afterwards governor, was the chairman.

<sup>4</sup> Debates of Va. Reform Convention, p. 109.



the revenues of the Commonwealth or levies of the county for one year preceding the election and had actually paid these assessments, should be granted the franchise.<sup>6</sup> On the other hand, the proposition was made to accept the report of the committee on suffrage with two exceptions: (1) that the residence of two years in the State be reduced to one, and (2) that a man be required to pay his taxes before election day.<sup>7</sup> These propositions were rejected, and the report of the committee was adopted July 16th without change.<sup>7</sup> There are no reports of the debates on the suffrage question in any of the newspapers, and no printed volumes of the debates have been found except one which closed May 1, and, since the suffrage report was not taken up until May 30, it is impossible to get any idea of the feeling which existed with reference to suffrage; but we have every reason to believe, because of the silence of the newspapers and because of the fact that the journal of the convention does not record the ayes and noes, that the new system of franchise was almost unanimously adopted. The journal simply stated that the report of the committee on suffrage was adopted. It is marvelous how, in the period of twenty years, the sentiment of the people had become so changed that suffrage could be extended to all male whites without newspaper comment or even a call for the ayes and noes in the convention. Just twenty years before, when such a proposition as universal manhood suffrage was proposed in Virginia's famous convention, the great political leaders of the State had denounced the movement as the first step to anarchy and ruin.

The embodiment of universal suffrage in the new constitution left Richmond in a peculiar condition. Under the charter of Richmond, no man who did not have property,

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<sup>6</sup> Ibid., p. 254.

<sup>7</sup> Ibid., p. 272.

<sup>7</sup> Journal of Convention, pp. 126, 236, 237, 309, 312-316. Many propositions were rejected, but the feeling which desired the payment of taxes before exercising the right of suffrage came near prevailing.

either real or personal, worth one hundred pounds, could vote for city officials. As soon as the citizens of Richmond saw that the new basis of suffrage was to be adopted, they petitioned to the convention that suffrage should be made uniform throughout the State, so that men, residing in Richmond qualified to vote in federal and State elections, would also be electors in city elections.<sup>9</sup> The convention, however, declined this petition<sup>9</sup> on the ground that the charter of Richmond had been granted by the General Assembly and that it fell to the General Assembly to amend the charter, so that all male whites residing in Richmond might have a voice in the city government. After the adoption of the new constitution, in 1852, the first General Assembly, elected under the new government, remodeled the charter of Richmond,<sup>10</sup> and suffrage then became the same throughout the State for all elections, whether federal, State or municipal. The suffrage clause, as embodied in the constitution, which was ratified by the people in October, 1851, was simply as follows: "Every white male citizen of the Commonwealth of the age of twenty-one, who has been a resident of the State for two years, of the county, city or town where he offers to vote, for twelve months next preceding an election—and no other person—, shall be qualified to vote for members of the General Assembly and all other officers elected by the people; but no person in the military, naval or marine service of the United States shall be deemed a resident of the State, by reason of being stationed therein. And no person shall have the right to vote who is of unsound mind, or a pauper, or a non-commissioned officer, soldier, seaman or marine in the service of the United States, or who has been convicted of bribery in an election, or of any infamous offense."<sup>11</sup>

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<sup>9</sup> Whig, July 25, 1851.

<sup>9</sup> Whig, Aug. 1, 1851. John Minor Botts moved that the redress be granted, but his motion was defeated by a vote of 58 to 37.

<sup>10</sup> *Supra*, p. 20.

<sup>11</sup> Constitution of 1851; Documents of 1851, p. 39. The new constitution was adopted by a large majority, and was submitted,

This was a great improvement upon the Constitution of 1829-30. It was simple and direct and left no doubt as to who was qualified to vote. No longer could it be said that no two of our best constitutional lawyers could agree on the suffrage clause of the constitution. No longer would the sessions of the General Assembly be wasted in trying to decide contested elections which would never have occurred had the constitution been so framed that it could be interpreted by any man of moderate intelligence. The new constitution had extended suffrage more than sixty per cent.<sup>23</sup> In 1851 the vote for governor was 110,000, and by the census of 1850 the white population was 895,867, so that at this time about thirteen per cent. of the people had voted; whereas before the extension of suffrage, at best, only about eight or ten per cent. of the people enjoyed the suffrage.

The convention of 1850-51 did far more towards reform than the people of the East had desired. On the question of representation it had yielded to the demands of the West. It had adopted nearly all of the reforms which had been advocated by the West even to the election of the judges by the people. Virginia had come up to this convention as an aristocratic government, but the new constitution made it one of the most democratic States of the Union. The State had only eight years in which to try its new form of government, a period hardly long enough to justify any conclusions as to how a broad, unrestricted democracy would succeed; and since these years were a period of great political strife in the affairs of the nation, little time could be given to a consideration of the internal conditions of

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as was the constitution of 1830, to those qualified, according to the new constitution, to be voters. The reforms accomplished were: (1) A more equitable apportionment of representation; (2) extension of suffrage; (3) election of governor and judges by the people; (4) a better system for taxation, and (5) election of all local officers by the people.

<sup>23</sup> Whig, Dec. 23, 1851, and Documents in Appendix to the Journal of the Convention of 1850-51.

the State. So we find very little complaint of the new form of government. The chief grievances which seemed to have concerned some of the leading politicians grew out of the fact that influential and wealthy planters often intimidated the poor whites, who were thus forced to exercise the franchise as ordered. The system of voting was still what it had been in 1619, *viva voce*. As yet a Virginian did not believe in the secret ballot. There was no longer any double or treble voting, as a man could only vote in the district where he resided. On the whole, we have every reason to believe that the new system of suffrage was satisfactory, and it is only to be regretted that it could not have been tried longer, but the cruel power which tears down governments and works revolutions came upon the State. Civil War forced Virginia from the Union; soon slavery was abolished; Amendments XIII, XIV, and XV were added to the Constitution of the United States, and the question no longer turned on free white manhood suffrage, but resolved itself into a problem of universal suffrage which was not to be limited by "race, color, or previous condition of servitude."

## CHAPTER VI.

### THE "UNDERWOOD CONSTITUTION."

The great questions of State government having been settled by the new constitution, and Virginia having become a democracy, the people of the State turned their attention to the all-absorbing questions of national politics—secession and slavery. Those persons in Eastern Virginia who were known as the "poor whites," having received the right of suffrage, though often intimidated by the influential planters, were true to the State, which is shown by the fact that, when the Civil War came on, they were willing to sacrifice their lives for Southern principles. The agitation of slavery throughout the country soon brought on the crisis in the nation which resulted in secession. In February, 1861, a convention met at Richmond which, after vain efforts to reconcile the North and the South, finally passed an ordinance of secession by a vote of 81 to 51.<sup>1</sup> The section west of the Alleghany Mountains opposed secession, and organized a government to act in concert with the Union, and called it the Government of Virginia. Francis H. Pierpont was made governor. A constitutional convention was called, and a constitution for West Virginia adopted, February 18, 1862.<sup>2</sup> Then in May, 1862, a Legislature met at Wheeling, claiming to be the Legislature of Virginia, though composed entirely of men from the

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<sup>1</sup> Code of Va. (1873), pp. 2, 8.

<sup>2</sup> For a full account of this, with references, see my paper on Representation in Virginia (J. H. U. Studies, 14th Series), ch. vii. The West Virginia Constitution adopted the same suffrage qualifications as the Virginia Constitution of 1851. Poore: Fed. & State Consts., vol. ii, p. 1979.

trans-Alleghany counties (about one-third of the counties of the State), and passed a bill giving the consent of the *State of Virginia* to the formation of this new State.<sup>3</sup> By a proclamation of the President of the United States issued the 19th day of April, 1863, West Virginia was to become a part of the Union in sixty days after this proclamation.<sup>4</sup>

The Pierpont Government, having accomplished the dismemberment of Virginia, was, in 1863, transferred from Wheeling to Alexandria. The General Assembly held at Alexandria passed a bill calling for a convention to frame a constitution for the remaining portion of Virginia. A convention accordingly assembled at Alexandria, February 13, 1864. Very few counties were represented, but a constitution was adopted.<sup>5</sup> This was never submitted to the people for ratification.

By this constitution, slavery, or involuntary servitude, was abolished in the State of Virginia. Suffrage remained the same as had been established by the constitution of 1851; but no man could vote unless he had paid all taxes for which he had been assessed.<sup>6</sup> All persons were likewise disfranchised who, since the first of January, 1864, had aided or abetted the "rebellion" then in progress. The right, however, was granted to the Legislature to remove the disabilities of those thus disfranchised. At the close of the Civil War, President Johnson by proclamation recognized the Alexandria Government as the legal government of the State, and the Alexandria Constitution as Virginia's constitution. Governor Pierpont then moved his government to Richmond; and there, on June 19, 1865, a General

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<sup>3</sup> Code of Va. (1873), p. 14. Under the Constitution of U. S. it was necessary that the Legislature of Va. should give consent to the formation of a new State out of its territory (U. S. Const., art. iv, sect. 3, cl. 1); hence we see one-third of the State claiming to be the whole State.

<sup>4</sup> Code of Va. (1873), p. 15. An act for the admission of West Virginia had passed Congress, Dec. 31, 1862.

<sup>5</sup> Code of Va. (1873), p. 18.

<sup>6</sup> Poore: Fed. and State Consts., vol. ii, p. 1939.

Assembly, which was a fairly representative body, met. The governor sent in a message asking that an act be passed to allow him the right to submit to the vote of the people the question of the Legislature being granted the power of amending Art. III of the constitution, the article which related to suffrage. Pierpont held that this ought to be done because the disfranchising clause in the constitution prevented more than ninety per cent. of the whites from voting. He believed that the Virginians who had been in the "rebellion" had erred through misjudgment, and should not be regarded as traitors; and that by all means they should have a voice in the State government, as they paid nearly all of the taxes of the State.<sup>7</sup> This request was embodied into an act which passed June 21, 1865; and, when submitted to the people in the fall of 1865, it was approved at the same time that a new General Assembly was elected.<sup>8</sup> In carrying out the provisions of this act the Legislature granted suffrage to all male whites over twenty-one years of age who had paid taxes to the State. Not a word was said about any one who had taken part in the Civil War, and no man was disfranchised because of any part in that war.<sup>9</sup> The members of the Legislature, however, were not yet satisfied with the constitution. It was claimed that the constitution under which they were living had been hatched in a "cock-loft" in Alexandria, and had been forced upon them at the bayonet; so several attempts were made to call a constitutional convention to frame a new constitution for the State.<sup>10</sup> After much debate, it was decided to drop the matter, as it would be inexpedient for the State to undertake to make a new constitution while the Congress of the United States was still hostile to the South. At this time the XIVth amendment to the Constitution of the United States was sub-

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<sup>7</sup> Enquirer, Dec. 1, 1865; Journal of H. of Del., 1866-67, p. 2.

<sup>8</sup> Acts, 1865-66, p. 197.

<sup>9</sup> Ibid., p. 226.

<sup>10</sup> Journal of House of Delegates, 1865-66, p. 444; Journal, 1866-67, pp. 25, 152.

mitted. Pierpont was a much wiser man than the people of Virginia are willing to acknowledge. He had in a high handed way been the moving spirit in separating West Virginia from the State. He had raised 25,000 troops for the Union army, and, consequently, was regarded by the Eastern Virginians as a traitor. Yet, as we see him at this time, we cannot but believe that he was a conscientious man, and, having at heart the Union, he forgot for a time his native State; but, when President Johnson acknowledged him as the real governor of the State, he seems to have taken a deep interest in building up Virginia and desired to overlook the fact that any citizen had borne arms against the Union. When the XIVth amendment was submitted by Congress to the States for ratification, Pierpont saw the temper of the Federal Congress, and in his message to the Virginia Legislature he advised that the State should ratify at once.<sup>11</sup> He said that the State should become at once a constituent part of the United States, and that its voice should again be heard in the halls of the Federal Congress, that Virginia's example would probably be followed by the other Southern States, and that these States, once in the Union, could prevent any oppressive legislation which Congress might afterwards desire to enact. He said that the absolute control of suffrage would then be in the hands of the States, and with the South once more represented in Congress, it would be impossible for the Federal Government to enforce negro suffrage. In other words, Pierpont saw that the rejection of the XIVth amendment by the Southern States would only incense Congress, and finally result in still another amendment which would establish negro suffrage. If Pierpont's advice could have been followed, we might never have had the XVth amendment with the many evil results which have followed from it. The Legislature, however,

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<sup>11</sup> Journal of House of Delegates, 1866-67, pp. 2-3; Document No. 1, p. 37; Enquirer, March 7, 1867.



refused to ratify the XIVth amendment." Only a few months after Congress passed the two famous reconstruction acts (one of March 2, and the other of March 27, 1867), which made provision for the reorganization of the governments of the Southern States." By these acts the Virginia government, previously recognized by Johnson, was disregarded, and Virginia was put under military rule. General J. M. Schofield was made military commander in Virginia, but Pierpont continued for a while to act as governor under Schofield's directions. The military commander, under the reconstruction acts, was instructed to take, before September 1, 1867, a registration of all persons entitled to vote, that is of all male persons over twenty-one years of age, white or colored, but all persons who had held any military or civil office (no matter how insignificant) under the United States, or in any State, and had taken the oath of allegiance to the United States, and afterwards had in any way aided the "rebellion" were disfranchised. An election should then be held to take the sense of the registered voters for calling a constitutional convention and at the same time to elect delegates to the convention. October 22, 1867, was appointed by General Schofield as the date for the election. For the first time negroes voted in Virginia. The elections were conducted by ballot, and the negro votes were placed in one ballot box and the white votes in another.<sup>14</sup> By this means we are able to ascertain the sentiment of the whites and the blacks. At the election, 76,084 whites and 93,145 negroes voted. The vote for the constitution was 107,342, of which number only 14,835 were whites. The vote against the convention was 61,887, of which only 638 were negroes.<sup>15</sup> Thus we see that the whites were violently opposed to the convention,

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<sup>13</sup> Acts, 1866-67, pp. 508-509.

<sup>14</sup> See these acts in Documents of Convention, 1867-68, p. 8, et seq.

<sup>15</sup> Enquirer, Oct. 23, 1867. This was the first election ever held by ballot in Virginia. The *viva voce* system had always prevailed.

<sup>16</sup> Documents of Convention (1867-68), pp. 52, 56.

while the negroes were greatly in favor of it. The white people were anxious to delay the reorganization of the State because they believed that in a short time a reaction would take place at the North—that the Democratic party of the North would win in the elections and that the South would be able to get better terms.

The convention assembled in Richmond, December 3, 1867, and remained in session until April 17, 1868. It was composed of 105 members, of whom 81 were whites and 24 negroes. According to the parties there were 68 Radicals or Republicans and 37 Conservatives or Democrats. Thirty-three members were non-natives of the State, persons who had come to Virginia from the North immediately after the Civil War and were known as "carpet-baggers." The Radical party of 68 contained 14 white Virginians who were known as "scallawags." Putting it another way, 54 members of the convention were northern incomers and negroes, who together formed a majority." The convention was thus controlled by an element foreign to the best interests of the State, so the best people of Virginia have always been violent in their denunciation of the constitution which it drafted. Judge J. C. Underwood, a native of New York, a man thoroughly detested in Virginia, was made president of the convention; therefore, the constitution which was adopted has always been known as the "Underwood Constitution."

The convention was organized by the appointment of twenty standing committees to report clauses for a constitution. The committee on elective franchise, composed of

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<sup>18</sup> Dispatch, April 10, 1868. Fourteen were from New York. A native of New York was made president. A Marylander was made secretary, and another sergeant-at-arms. An Irishman from the North was made stenographer, and a native of New Jersey, assistant clerk. The doorkeepers were negroes, and the chaplain was from Illinois. All the pages, except one, were negroes or sons of Northern men, and the clerks of the twenty standing committees, with a few exceptions, were negroes and Northern men. Such a convention was necessarily distasteful to native Virginians.

eleven members, was one of the most important." Seven of its members were Radicals and four were Conservatives. Mr. Hunnicutt was chairman of this committee. As was expected, the committee did not agree. The Radicals brought in a majority report, and the Conservatives a minority report.<sup>17</sup> The majority report favored universal suffrage for all males over twenty-one without limitations, except that all persons who had been disfranchised under the reconstruction acts should not be allowed the right of suffrage in Virginia. Moreover, no man should be allowed to be elected to office who had in any way aided or engaged in the "rebellion." The minority report advocated the franchise being given to all male whites who had paid taxes to the State for a year preceding the election. The debate on these reports began on the 20th of February, 1868, and, with more or less interruptions, lasted to the first of April. It was evident to all that the Radicals would carry their measure, but the Conservatives did all they could to worry them. In the course of the debate many disagreeable things were said by both the Conservatives and the Radicals. The negroes were a very unruly element and gave offense to the better class of the Radical party. A Conservative member, Mr. Liggett, of Rockingham, became disgusted with the whole procedure and so stated in the convention, and, on refusing to vote when the ayes and noes were called, he was expelled from the convention.<sup>18</sup> The negroes would have been glad to have disfranchised every white man in the State, if it could have been done; and about one-third of the Radical members from the North were in sympathy with the negroes. General B. F. Butler visited Richmond while the convention was in session, appeared before it,<sup>19</sup> and urged that all should be disfranchised who held promi-

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<sup>17</sup> Enquirer, Dec. 11, 13, 1867.

<sup>18</sup> Documents of Convention, 1867-68, pp. 156, 193; Enquirer, Feb. 13, 1868.

<sup>19</sup> Enquirer, March 15, 1868.

<sup>20</sup> Enquirer, Jan. 15, 1868.

ment places in the community—such as presidents of banks and of stock companies, etc. After five days of debate on the minority report, it was rejected by a vote of 29 to 59.<sup>22</sup> In their argument for the minority report the Conservatives claimed that there could be no doubt of the fact that this was a “white man’s country,” and that their effort to establish negro domination would eventually result in bloodshed and riot. They claimed that Jefferson was a true prophet, that he had said: “Nothing is more certainly written in the book of Fate than that these people (negroes) are to be free; nor is it less certain that the two races, equally free, cannot live under the same government.”<sup>23</sup> As the Conservatives saw it, there would be no use in trying to give the two races equal rights in the same government. After the rejection of the minority report, the Conservatives tried in vain for a property qualification; and then a proposition for an educational qualification to take effect in 1875 also failed.<sup>24</sup> After these failures the disgust of the Conservative element is pretty well shown by the motion of Mr. E. Gibson: “No white man shall vote or be eligible to any office within this State.”<sup>25</sup>

The spirit of the convention was decidedly against all persons who had in any way engaged in war against the Union. Hunnicutt declared that he was in favor of disfranchising 30,000 more in Virginia than had been disfranchised by the reconstruction acts,<sup>26</sup> but Hine and Hawxhurst seemed to be most determined to persecute the whites of the State. Hine moved that, in addition to those who had been disfranchised, all persons who had held any position in the army ranking above first lieutenant should be excluded from the right of voting. This produced a division in the Radical ranks. Only 32 of their number voted

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<sup>22</sup> *Enquirer*, March 5, 1868.

<sup>23</sup> *Enquirer*, Feb. 21, 1868.

<sup>24</sup> *Enquirer*, Jan. 22, 1868; *Journal of Convention*, 1867-68, p. 273.

<sup>25</sup> *Journal of Convention*, 1867-68, p. 227; *Enquirer*, March 7, 1868.

<sup>26</sup> *Enquirer*, March 4, 1868. This was desired in order that the negro vote might control all elections.

for it. These were 22 negroes and 10 of the Northern incomers." Mr. Hine then proposed to disfranchise all original secessionists, *i. e.* persons who had voted for candidates pledged to secession in 1861. This also received only 32 votes, as opposed to 51 against it." Hawxhurst then proposed that no candidate for the secession convention, if he had been pledged to secession, should vote." With reference to the ironclad oath, the Radicals had no trouble in embodying it in the constitution," though General Schofield appeared in the convention and advised them to leave this out. He also thought the disfranchising clause ought to be omitted. He was hissed and called "King Schofield" by the negroes." The constitution, as finally adopted by the convention, contained the following clauses with reference to the elective franchise: "

"Art. III, Sec. 1. Every male citizen of the United States, twenty-one years old, who shall have been a resident of this State for twelve months and of the county, city or town in which he shall offer to vote, three months next preceding any election, shall be entitled to vote upon all questions submitted to the people at such election: Provided, That no officer, soldier, seaman, or marine of the United States army or navy shall be considered a resident of this State by reason of being stationed therein: And, Provided also, That the following persons shall be excluded from voting:

1. Idiots and lunatics.

2. Persons convicted of bribery in any election, embezzlement of public funds, treason or felony.

3. No person who, while a citizen of this State, has, since the adoption of this Constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, ever within or beyond the boundaries of this State, or knowingly conveyed a challenge or aided or assisted in any manner in fighting a duel, shall be allowed to vote or hold any office of honor, profit, or trust, under this Constitution.

4. 'Every person who has been a Senator or Representative in Congress, or elector of President or Vice-President, or who held

<sup>26</sup> Enquirer, March 25, 1868.

<sup>27</sup> Ibid.

<sup>28</sup> Enquirer, March 27, 1868.

<sup>29</sup> Enquirer, March 24, 1868. The vote was 43 to 29.

<sup>30</sup> Dispatch, April 18, 1868.

<sup>31</sup> Enquirer, April 20, 1868, and Code of Va. (1873).

any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a Member of Congress or as an officer of the United States, or as a member in any State Legislature, or as an executive or judicial officer in any State, shall have engaged in insurrection or rebellion against same, or given aid or comfort to the enemies thereof.”<sup>22</sup> This clause shall include the following officers: Governor, lieutenant-governor, secretary of the State, auditor of public accounts, second auditor, register of the land office, State treasurer, attorney-general, sheriffs, sergeants of the city or town, commissioner of the revenue, county surveyors, constables, overseers of the poor, commissioner of the board of public works, judges of the supreme court, judges of the circuit court, judges of the court of hustings, justices of the county courts; mayor, recorder, aldermen, councilmen of the city or town; coroners, escheators; inspectors of tobacco, flour, etc.; clerks of the supreme, district, circuit and county courts, and of the court of hustings; and attorneys for the commonwealth: *Provided*, That the Legislature may, by a vote of three-fifths of both Houses remove the disabilities incurred by this clause from any person included therein by a separate vote in each case.”<sup>23</sup>

Section 7 of the following is the “ironclad” oath which would have excluded all of the best citizens of the State from any public office:

“Sec. 6. All persons, before entering upon the discharge of any function as officers of this State, shall take and subscribe the following oath or affirmation:

‘I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of the State of Virginia; that I recognize and accept the civil and political equality of all men before the law, and that I will faithfully perform the duty of \_\_\_\_\_ to the best of my ability. So help me God.’

Sec. 7. In addition to the foregoing oath of office, the governor, lieutenant-governor, members of the General Assembly, secretary of State, auditor of public accounts, State treasurer, attorney-general, all persons elected to any convention to frame a constitution for this State, or to change, alter, or amend or revise this constitution in any manner, and mayor and council of any city or town, shall before they enter on the duty of their respective offices, take and subscribe the following oath or affirmation, provided, the disabilities therein contained may be individually removed by a three-fifths vote of the General Assembly:

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<sup>22</sup> This is quoted from the reconstruction acts.

<sup>23</sup> This fourth clause is usually spoken of as the “disfranchising clause.”

'I do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel or encouragement to persons engaged in armed hostility thereto; that I have never sought nor accepted, nor attempted to exercise the function of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.'

The above oath shall also be taken by all city and county officers before entering upon their duties, and by all other State officers not included in the above provision."

These clauses were extremely offensive to the white people of Virginia. The sentiment which then prevailed and which now prevails to a great extent is shown by the following extract from an editorial in the *Enquirer*: "

"The white men of Virginia mean to control the government of this State, and they are determined not to allow themselves to be governed by an inferior race, so lately their illiterate slaves. They do not intend to prove themselves unworthy of their proud ancestry, nor permit the priceless heritage of fame and glory which has been handed down to them from their world-honored sires, now to be dragged in the filth and mire by a mob of ignorant negroes, led on by a handful of low adventurers the blackness of whose hearts constitutes their only tie of fraternity with their black-faced followers. This determination will be adhered to as the son of Hamilcar kept his oath of hostility to Rome." The *Enquirer* claimed that there was no feeling of animosity towards the negroes, but that it was out of the question to think that the white, intelligent race could submit to be ruled by their former slaves.

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<sup>a</sup> *Enquirer*, April 20, 1868.

The Conservative members of the convention were thoroughly incensed by the new constitution, and issued an address to the people of Virginia, arraigning the constitutional convention and its motives.\* They said that all the taxes were placed upon the whites, that representation was so apportioned as to give the negroes control of the Legislature, that the idea was, if possible, to have mixed schools, that property would not be safe, that the new county system, as proposed, would work very seriously for the whites, that by the "ironclad" oath 999 out of every 1000 of the whites would be incapable of holding office, and that the suffrage clause was an outrage.

The following extracts present the Conservative view of the "Underwood Constitution."

"There is universal negro suffrage, without limitation, except that the party shall be a male, of sound mind, twenty-one years of age, who has not been convicted of crime, and who has resided twelve months in the State and three months in the county where he proposes to vote. We could not secure any educational or property qualification whatever; not even the prepayment of taxes; not even the prepayment of one dollar poll-tax. We could not even persuade them to exclude paupers. But this universal suffrage was confined to negroes; all whites who ever held any office, civil or military, in the State including the large list of county and municipal officers and who afterwards participated in the 'rebellion,' are excluded not only from office, but from the elective franchise. The object of this was to secure, as Mr. Botts expressed it, in an address made before the Radical members of the convention, 'a good working majority' in the State, to give a decided preponderance to the negroes in the Legislature as well as in the county organization."

In connection with these views on suffrage, we may note also what the Conservatives thought to be the prevailing spirit in the North:

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\* *Enquirer*, April 20, 1868.



"Every Northern State which has voted on the subject since the close of the War has rejected negro suffrage. Ohio, on a direct issue, no later than last fall, did so by a majority exceeding 50,000. Kansas, Minnesota and Connecticut had previously done the same thing. The late Constitutional Convention of New York deliberately recoiled from deciding the question. And Michigan, hitherto so overwhelmingly Republican, has just voted down her new Constitution by a majority of 30,000, because it admitted the negroes to the polls. The census shows that there were only some 35,000 negroes in Ohio in 1860. There could have been only about 7000 negro voters in that State, had they been enfranchised. In Michigan there are only about 500 male negroes twenty-one years of age. The white voters number more than 165,000. And yet this State, where a Republican Governor was elected in 1866 by a majority of 29,038, refused by some 30,000 majority to let 500 negroes vote."

The members who issued this address expressed no hatred of the negroes, no feeling of animosity towards them, acknowledged that they had behaved well during the war and that they were entitled to thanks for their behavior. The feeling, however, was intense against the Northern incomers and the native whites who hoped to gain power through the negro vote. The Conservatives desired to give the negro the protection of the law and to give him employment, but, because the negroes belonged to an inferior race, they did not believe that the two races could have equal political rights and live in peace and harmony. They believed that they were to have "unmitigated negro rule" by means of the few whites in the Radical party. They believed that the State government would be in the hands of a group as mixed as that which composed the convention.

The Conservative party proceeded to organize throughout the State with the determination, if possible, to defeat the new constitution which was to have been submitted to

the vote of the people on the 2nd of July, 1868; but on account of the failure of the Federal Government to provide means for holding the election, Schofield decided that the election should not be held." In the fall of 1868 the presidential election took place, and resulted in the election of General Grant, who became President, March 4, 1869. A milder feeling towards the South came to exist in official circles in Washington. In Virginia a split occurred in the Radical party, one faction following H. H. Wells who had succeeded Pierpont in 1868." This faction was vigorous in favoring the adoption of the "Underwood Constitution" with its "disfranchising" clause and its "ironclad" oath. The other faction was headed by Gilbert C. Walker and declared its opposition to the "Underwood Constitution" unless the "disfranchising" clause and the "ironclad" oath should be removed." The State officials were also to be elected when the constitution was submitted. Wells was the gubernatorial nominee of one faction, and Walker of the other. The Conservatives also had in the field a ticket. Such was the state of affairs in April, 1869, when a bill passed Congress providing that the "Underwood Constitution" should be submitted to the vote of the people of Virginia." Because of the disaffection in the Radical ranks and the opposition of the Conservatives, Congress had every reason to believe that the "Underwood Constitution" would not be ratified by the vote of the people. So the bill provided that the President should have discretionary powers as to the time for holding the election, and that he might, also, set aside such clauses of the constitution as he might think should be voted on separately by the people of Virginia." Early in May the Conservatives, on assur-

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" Dispatch, April 5, 1868.

" Enquirer, April 6, 7, 1868. Wells was from New York, and it was claimed that Pierpont was removed because he was distrusted on account of being a native of Virginia.

" Enquirer, March 26, 1869.

" Code of Va. (1873), p. 26.

" Code of Va. (1873), p. 26.

ance that President Grant would probably set aside the 4th clause of the first section of the third article of the constitution (*i. e.* the "disfranchising clause"), and the 7th section of the third article (*i. e.* the "ironclad" oath), withdrew their candidates, and, though they made no declaration, they threw their support to Gilbert C. Walker and his ticket.<sup>a</sup> Grant issued his proclamation on May 17, stating that the election on the ratification of the constitution should take place on the 6th of July, 1869, and, as expected, set aside the two clauses to be voted on separately.<sup>a</sup> The "disfranchising clause" was rejected by a vote of 124,360 to 84,410, and the "ironclad" oath by a vote of 124,715 to 83,458, but the constitution was adopted by a vote of 210,585 to 9,136.<sup>a</sup> So we see that the chief opposition to the "Underwood Constitution" had been the suffrage clauses.

With the "disfranchising clause" and the "ironclad" oath removed, the Constitution of Virginia remained as adopted by the "Underwood Convention." Under the constitution, amendments could be added provided they were introduced and carried through one Legislature, and, after being approved by the next Legislature, they were ratified by the vote of the people. In 1875, when the Legislature was under the control of the Democrats, a bill was passed to amend the constitution so that no man could vote unless he had paid his capitation tax before the election day. This was approved of by the next session of the Legislature on February 22, 1876,<sup>a</sup> and was ratified by the vote of the people in November of the same year. The amendment was carried by a majority of 31,014.<sup>a</sup> This

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<sup>a</sup> Enquirer, May 4, 1869.

<sup>a</sup> Code of Va. (1873), pp. 26-27; Enquirer, May 17, 1869.

<sup>a</sup> Code of Va. (1873), pp. 26-27.

<sup>a</sup> Acts, 1875-76, p. 83; Poore's Fed. and State Consts., vol. ii, p. 1975.

<sup>a</sup> Governor's Message: Journal of H. of Del., 1876-77, p. 22. Suffrage was not the only thing changed. An amendment was carried to have biennial sessions of the General Assembly, and thus to save much expense to be incurred by annual sessions.

was aimed at the negro, as it was believed that he would fail to pay his poll-tax as required.<sup>a</sup> The scheme did not work well. It gave an opportunity for fraud. Candidates would frequently buy votes by paying the taxes; and, in addition to the fraud, it often involved heavy expenses on the candidates, as many men who had decided how they would vote, would not pay their poll-taxes, and the candidates and party organizations would have to pay for them. This was a very expensive business.

In 1880 the so-called "Re-adjuster" party was in power. They introduced a resolution in the Assembly to amend the constitution by repealing the poll-tax clause.<sup>b</sup> They claimed that the whole thing was a scheme of the Democrats by which many poor whites and negroes were disfranchised. The Democrats claimed that the "Readjusters" were trying to appeal to the lower classes, and to make votes by introducing the measure; still it was pretty generally conceded that the revenues of the State had not been increased to any appreciable extent by the poll-tax prerequisite for voting and that a great deal of fraud had come out of it.<sup>c</sup> The Legislature approved of the bill to repeal the poll-tax clause. At the session of 1881-82 the measure was again approved and submitted to the vote of the people in November, 1882, and adopted by a large majority. Many Democrats, as well as "Re-adjusters," seemed to have come to the conclusion that the best thing to do was to get rid of the measure. The Dispatch, in an editorial which very probably voiced the sentiment of the leading politicians of the State, said: "So there will be no money needed hereafter to pay capitation taxes in Virginia as a means of increasing the vote of their party."<sup>d</sup> Since 1882 there has been no change in the suffrage.

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<sup>a</sup> Dispatch, Feb. 28, 1880.

<sup>b</sup> Dispatch, Feb. 27, 28, 1880; Acts, 1879-80, pp. 296-297.

<sup>c</sup> Message of Governor Cameron: Jour. of Senate, 1881-82, p. 72; Dispatch, Jan. 15, 1882; Feb. 28, 1880; Nov. 21, 1882.

<sup>d</sup> Dispatch, Nov. 14, 1882.

There has always been in Virginia a decided opposition to the "Underwood Constitution," and for some time there has been a strong sentiment for a constitutional convention. At every session since 1874 resolutions have been offered either to amend the constitution, or to take the vote of the people on calling a constitutional convention.<sup>80</sup> A bill to call a constitutional convention passed the House of Delegates in 1878, but was postponed indefinitely by the Senate.<sup>81</sup> For about ten years the public debt and the expenses of the government were the all important questions, and, in 1888, a bill passed the General Assembly to take the voice of the people with reference to a convention.<sup>82</sup> This was required by the "Underwood Constitution." At the elections in November of that year the convention was voted down.<sup>83</sup>

During the last ten years the desire for a change in suffrage has become evident to all observant persons, but the question of how to change suffrage is far from being solved. Some want an educational qualification, claiming that no man ought to vote who has not a certain amount of intelligence and that an educational qualification is the best test for this. Then it is thought that the educational qualification will disfranchise quite a number of negroes. Others want a property qualification, believing that this will disfranchise more negroes. Others would be glad to see both the educational and property qualification, pro-

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<sup>80</sup> Journal of H. of Del., 1877-78, p. 261; 1879-80, p. 251; 1883-84, pp. 26, 64, etc.; 1884 (extra session), p. 154; 1885-86, p. 213; 1887 (extra session), pp. 31, 32; 1888-89, p. 410; 1891-92, p. 379; 1893-94, pp. 16, 208, etc.; 1895-96, pp. 204, 409; 1897-98, p. 693; 1899-1900, pp. 39, 127, etc.

<sup>81</sup> Journal of H. of Del., 1877-78, pp. 391, 494, 508. The Dispatch at this time declared against a convention and said that every constitutional convention in Virginia had gone from bad to worse (Dispatch, Feb. 21, 1878).

<sup>82</sup> Journal of H. of Del., 1887-88, pp. 397, 410.

<sup>83</sup> Dispatch, Nov. 7, 1888. There was no interest in the matter.

vided that no veteran of the Civil War or descendant of such a person would be disfranchised."<sup>4</sup>

Within the last decade three resolutions have been offered in the General Assembly to amend the suffrage clause in the constitution.<sup>5</sup> The only one which was approved by either House was the Le Cato resolution which passed the Senate in February, 1898. This resolution proposed to go back to the capitation tax as a requisite for voting.<sup>6</sup> It failed to pass the House of Delegates. The failure of the General Assembly to offer any amendment with reference to the electoral franchise was not from an unwillingness to change, but because there had been a strong hope for a constitutional convention where this matter might be fully discussed.

In 1896 Senator Eugene Withers offered a resolution providing for the calling of a constitutional convention which passed both the Senate and the House.<sup>7</sup> By the provisions of this resolution, at the election held the 4th Thursday in May, 1897, the vote of the people was taken. The vote for the convention was 38,326; and against the convention, 83,435.<sup>8</sup> This seemed a decided majority, and would, at first sight, indicate that the people did not want a convention. The facts in the case are that a large majority of the Democratic party desired a convention, but had no fixed views as to what changes ought to be made in suffrage. When such a man as Congressman William A. Jones advised the people to vote against a convention be-

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<sup>4</sup> See Dr. Priddy's proposed amendment to constitution, *Dispatch*, Jan. 6, 1900, and *Journal of House of Del.*, 1899-1900, p. 127; *Dispatch*, Feb. 2, 3, 1898.

<sup>5</sup> *Journal of House of Delegates*, 1897-98, p. 662; 1899-1900, p. 127; 1891-92, p. 379.

<sup>6</sup> *Dispatch*, Feb. 9, 1898; Jan. 5, 1900; *Jour. of H. of Del.*, 1897-98, pp. 662, 693.

<sup>7</sup> Mr. Withers claimed that the expenses of the State demanded a convention at once. The expenses in running the State of Virginia were two-thirds as much as North Carolina and Georgia combined. *Dispatch*, Feb. 23, 1896.

<sup>8</sup> *Journal of House of Delegates*, 1897-98, p. 78.

cause the Democrats seemed divided, it was but natural that the measure should fail.<sup>80</sup> The papers also thought it inexpedient to call a convention under these conditions, and the Democratic State Convention held at Staunton failed to make the calling of the convention a party issue.<sup>81</sup> On the other hand, a Republican Convention held at Staunton denounced the proposition of holding a constitutional convention with the intention of disfranchising illiterates and of injuring public schools, as they claimed.<sup>82</sup> Under these conditions (Democrats being divided and the Republicans being united), it is easy to see why the convention movement was defeated in 1897.

The matter still continued to be discussed. Such election laws as the "Walton Law" and the "Parker Law" have caused many Virginians to become ashamed.<sup>83</sup> It is an open secret that, under these laws, many frauds have been perpetrated by the election officers. Still, there is the feeling that the white people must rule, and that, so long as universal negro suffrage stands, such election laws as now exist must stand. For the sake of the good name of Virginia for public honesty, all feel that some restrictions must be placed on suffrage so that the ignorant and vicious and those who have no "permanent common interest with, and attachment to, the community" must be disfranchised. Then elections may exist without fraud.

This being the state of affairs, another bill was introduced in 1900 to take the vote of the people on calling a constitutional convention. This passed the General Assembly. The State Democratic Convention held at Norfolk on the 2nd of May made the calling of a convention a party matter, and at the spring elections held on the

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<sup>80</sup> Dispatch, May 25, 1896; June 6, 1896.

<sup>81</sup> Dispatch, June 4, 1896.

<sup>82</sup> Dispatch, April 24, 1896. The Democratic Convention pronounced this as a slander on the party.

<sup>83</sup> Dispatch, Feb. 29, 1896.

fourth Thursday in May, 1900, a majority of those voting declared in favor of the measure."

Since the first of March, 1900, many discussions have occurred in the papers with reference to suffrage. From the many newspaper articles we are justified in concluding that a large majority of the white people of the State are anxious for the convention to make some radical changes in suffrage. They desire that the changes may be made so that no whites may be disqualified, but that many negroes may be disfranchised. At the Democratic State Convention at Norfolk in May, 1900, the party openly committed itself to what might be termed a "white man's constitution." The following extracts from the platform then adopted indicate the spirit which then prevailed, and which will necessarily control the Democratic members of the constitutional convention: "Whereas the General Assembly of Virginia has submitted to the vote of the people the question of the calling of a constitutional convention, and whereas, it is the evident desire of the white people of Virginia to amend and revise the present constitution;

"Resolved, That the Democratic party, in convention assembled, endorse the action of the General Assembly, and earnestly urge the people of Virginia to vote on the fourth Thursday in May for calling a constitutional convention.

"Resolved, That it is the sense of this convention that in framing a new constitution no effort should be made to disfranchise any citizen of Virginia who had a right to vote prior to 1861, nor the descendant of any such person, and that when such a constitution shall have been framed, it shall be submitted to a vote of the people for ratification

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"The legislative caucus of the Democratic party had declared for a convention to revise the constitution as to criminal expenses and suffrage. There was something of an element in the party against the convention, but not very strong. After the action of the Norfolk convention the matter was well supported by the Democrats. The official vote was 77,362 for the convention and 60,370 against it. Dispatch, April 1, 5, 8, 21, 27, 29, May 2, 3, 25, June 7, 1900.



or rejection, and the Democratic party pledge that the expenses incident to a constitutional convention shall be kept down to the lowest possible figures." "

The newspapers have repeatedly quoted these resolutions and declared that the illiterate whites would not be disfranchised. We cannot but regret that the Democratic party in a convention should have committed itself to what seems a subterfuge to avoid direct conflict with the XIVth and XVth amendments of the Constitution of the United States. We realize very fully that few negroes are fit to be citizens; that the XIVth and XVth amendments were very great mistakes; and that they have been the cause of all the election troubles which have prevailed in the South.

However, so long as these amendments remain a part of the United States Constitution, it is practically a piece of dishonesty to try to frame a constitution which in word will not violate these amendments, while in its spirit and its working it will disfranchise many belonging to one race and allow the franchise to be exercised by all of another race. For one thing, the writer of this article believes in an educational qualification. He would like to see at least three-fourths of the negroes deprived of their votes, but not in the face of the present Constitution of the United States. An educational qualification will deprive very few of the right to vote, and for this reason it is not being vigorously advocated by the leading politicians of the State. It has been suggested that a poll-tax of three dollars per annum might be imposed on every male citizen and that no citizen could vote unless he had paid this tax for the fiscal year preceding the election." This would be a very great check to the exercise of suffrage by the worthless who never pay their taxes. To a very great extent, the fraud which was practiced under this system between 1876 and 1882 could be avoided by forbidding the collectors from

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"Dispatch, May 3, 4, 1900.

"This suggestion was made by Mr. A. F. Thomas in a paper on "The Virginia Constitutional Convention." This pamphlet is a very admirable one.

receiving the payment of these taxes except directly from the person against whom the tax is levied. This capitation tax of three dollars and an educational qualification would work uniformly on all classes. Many plans might be suggested, but we cannot help believing that, were the negro question eliminated, universal suffrage with an educational qualification is the true standard for a democracy. With the negro problem to face it is different. A still better test of "a permanent common interest with, and attachment to, the community" is needed, and some tax qualification should be required. A property qualification would be excellent but for the fact that many of our most enlightened and progressive citizens often own no property (certainly no real estate), and under these conditions it would be very hard to establish a property qualification without disfranchising many who are really excellent citizens. A poll-tax of two dollars or even three could be paid by such citizens without serious embarrassment. A tax of three dollars represents an assessment on about three hundred dollars worth of property. If such a poll tax should be imposed, the revenue to the State from the voting population would be large, and the levies on other kinds of property would, therefore, be reduced. In certain cases a large poll-tax would work something of a hardship; but, taking it all in all, the levies on the tax-paying class would practically remain the same. A man who can not pay three dollars a year towards the State government for the protection and liberties which he enjoys, is really not entitled to a voice in controlling the policy of the government.

THE MARYLAND CONSTITUTION  
OF 1864



SERIES XIX

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HERBERT B. ADAMS, Editor

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History is past Politics and Politics are present History.—*Freeman*

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THE MARYLAND CONSTITUTION  
OF 1864

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## PREFACE

This study was undertaken at the suggestion of Dr. Bernard C. Steiner, of the Johns Hopkins University, and is an attempt to trace one of the most important movements in Maryland history. Although obscured and complicated by the momentous events which were then rending the life of the nation to its very foundations, its most important phase was the effort to bring about the total abolition of slavery in the state. President Lincoln's Emancipation Proclamation of September 22, 1862, did not apply to Maryland, as this state was not in rebellion, hence the local movement was necessary in order to carry out the policy of the National Government, and the Constitution of 1864, with its prohibitory clause in regard to slavery, was the result.

The subject is divided as follows: Part I. treats of the political movement leading to the call of the Constitutional Convention; Part II. gives an account of the sittings of that Convention and the formation of a new Constitution; Part III. tells of the acceptance of the Constitution by the state.

The Proceedings and Debates of the Convention, the State Documents and Legislative Proceedings of the period, and the contemporary newspapers have been my chief sources, supplemented in part by personal conversation with some of those who took part in the movement.

W. S. M.

Baltimore, May, 1901.





# THE MARYLAND CONSTITUTION OF 1864

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## I.

It is a well-known fact that the two powerful and opposing forces of "freedom" and "slavery" battled with each other for years in the economic and political life of our country, till they ended in the Civil War of 1861-5. In fact, around these forces centred all the history of the United States up to that time, for they were born of our Constitution, were nursed into self-assertive strength under its provisions, and grew as the nation expanded, step by step, year by year, from one administration to another, till finally they overthrew all other ties of political fealty, religious association, and patriotic allegiance, and asserted themselves in the great question of the hour. This question was: Shall the nation be free in its domestic relations as in its government, or shall it countenance and protect negro slavery?

Although veiled under the immediate doctrine of "State's Rights," this fundamental contention soon pushed its way to the fore, and in a terrible struggle of brother against brother, was settled forever on the basis of negro emancipation and the integrity of the Union.

The state of Maryland, situated midway between the North and the South, the two great sections of the country that championed the respective sides of the question, united within her borders both the slave system, dominant in the southern counties, as well as the practically free labor of the northern counties and the mountain districts. To these must be added the city of Baltimore, a seething cauldron of divided political sentiment, and which was often opposed by the remainder of the Commonwealth in matters of state polity. Hence Maryland naturally became the scene of bitter strife, consequent upon and contempora-

neous with the larger struggle that was rending our nation to its very foundations.

Proximity to the city of Washington caused a very close surveillance of the state on the part of the Federal authorities, leading at times to direct interference in state and local affairs by them, as the loyalty of Maryland was in many ways very necessary to the safety of the National Government. One can well realize this by pausing to think of the consequences to the Union of having its capital entirely within the bounds of a hostile territory—a thing practically impossible, unless unbroken military success is presupposed, and even then a matter of great difficulty.

On the part of Maryland, the very fact of being a slave state naturally bound her more closely to the South, although at the beginning of the secession agitation during the latter part of Buchanan's administration probably the larger part of the people were in favor of standing by the Union. On the other hand, a majority were strongly opposed to coercing the South, and after the outbreak of hostilities, this opposition to the war ended in quite a change of sentiment in many cases, so that it is doubtful if the state would have finally remained in the Union, had it not been for the firm restraining hand of the Federal military authorities.<sup>1</sup> After all, it is practically impossible to reach absolute certainty in this matter, and it will always remain a mooted point, and largely a subject for conjecture.

The half-hearted Union men, if we may call them such, as well as those heartily sympathizing with the South, consistently fought all the measures necessary for carrying the war to a successful termination, such as drafting, negro emancipation and enlistments, martial law, and military supervision of elections and other distinctly state functions.

On November 6, 1861, the Union party succeeded in

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<sup>1</sup> The Southern sympathizers claimed this in 1864. See Debates ii, 825 (references merely to "Debates" and "Proceedings" refer to those of the "State Convention of 1864").

electing Augustus W. Bradford governor by over 31,000 majority, 15,000 more votes than the highest candidate at the presidential election of the preceding year.<sup>3</sup> A large majority of the Legislature also was loyal.

By this election Maryland was definitely lost to the cause of secession, and hereafter the main struggle was over the support of the National Government in the war measures mentioned above. The most important of these, which dealt with the original cause of the differences between the North and the South, was slavery, and around the question of emancipation soon centred the political activity of the next three years. President Lincoln precipitated the struggle in the spring of 1862, when he declared his policy of compensated emancipation, especially for the border states that had remained in the Union, and ultimately leading to national abolition of slavery. He first suggested this to some of the leading politicians, and afterwards officially recommended it to Congress, but desired the action of the above states to be voluntary.<sup>4</sup>

Before going further in tracing this movement, we must take a hasty look at the changed condition of slavery in Maryland at this time. While the interest of the people was directed towards the stirring national affairs of political and military moment, a domestic revolution had taken place, not so much as dreamed of a few years before.<sup>5</sup>

"Scarcely a year had elapsed after the war commenced before the institution of slavery in Maryland became utterly demoralized. The master lost all control over his slave. The relation between master and slave existed only as a feature in the legislation of the past. There was no power to compel obedience or submission on the part of the slave,

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<sup>3</sup> Scharf, "*Hist. of Md.*," iii, 460, states that many illegal votes were cast by Union soldiers stationed in Maryland and other interested persons.

<sup>4</sup> Nicolay and Hay, "*Life of Lincoln*," viii, 450-1.

<sup>5</sup> "*American*," Oct. 10, 1863 (Baltimore papers referred to, unless otherwise stated).

and there was no standard which could be appealed to as fixing the value of the slave as property. Maryland was neither a slave nor a free state."<sup>a</sup>

Among the many reasons for this state of affairs may be mentioned, first of all, the fact that the radical wing of the Republican party, which now largely favored emancipation, had almost complete control of the National Government, and practical control of the Maryland state government as well, through the presence of the armed military and the provost-marshals. Also, by the state of semi-anarchy which always accompanies a war waged near by, the social and industrial orders were almost paralyzed in Maryland, and legal remedies were more slow and uncertain. Again, the Federal forces regularly seized slaves, either for enlistment or for bodily labor in connection with the forts or supply departments, and they refused to return them (or even runaway slaves), to their masters. These facts are more than enough to explain the demoralized condition of slavery.

Although useless for all practical purposes, this institution was by no means dead politically, as following events will show. The people of Maryland were born and bred during its life and strongest influence, so that it was hard for many of them to realize the fact of its practical annihilation. In addition, they desired, if slavery must go, to procure some return for their lost property.

In an aggregate population of 687,000 in 1860, there were 83,942 free negroes and 87,189 slaves. The number of slave-owners was estimated at about 16,000, though many of these owned only one or two slaves.<sup>b</sup> A state with so nearly a numerical equality between free negroes and slaves, offered an excellent opportunity for pushing a policy of emancipation, and this opportunity the emancipation advocates were not slow to seize.

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<sup>a</sup> Inaugural address of Governor Swann, Jan. 11, 1865.

<sup>b</sup> "Debates," i, 616.

President Lincoln, on March 6, 1862, sent in his message urging a policy of compensated emancipation, and it was approved by resolution of Congress on April 10.<sup>7</sup> He had an interview on this subject with the delegations from the border states on March 10, 1862, at which two of the Maryland representatives were present—Cornelius L. L. Leary and John W. Crisfield—but they gave him little encouragement. A second interview, four months later, was no more successful, the border states practically declining to entertain his proposals.

"Little could be expected from the Maryland Union representatives at that time in behalf of the President's policy. They had been elected on June 13, 1861, by the party organization which still reflected the conservatism existing before the war, and whose single bond of party affiliation was opposition to secession and disunion—a condition of political sentiment at that time common to all the border slave states and which was formulated by the Crittenden resolution."<sup>8</sup>

The bill for the abolition of slavery in the District of Columbia which finally, after much delay, passed Congress in the month of April, 1862, served to show the people of Maryland that the cause of emancipation was advancing, and that they must at once prepare to deal with it. The Legislature of 1862, still showing the old suspicious attitude of the slave-owners, who were always on the lookout for anti-slavery measures, had already passed resolutions of loyalty to the Union, but had also protested against any agitation of the subject of emancipation. Hon. Francis Thomas, of Maryland, on January 12, 1863,<sup>9</sup> introduced in Congress a resolution looking toward compensated emancipation in Maryland, and a few days later a

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<sup>7</sup> House Journal, 37th Congress, 2d Session, p. 528. Senate Journal, p. 382.

<sup>8</sup> Nicolay and Hay, "Life of Lincoln" (from which we have largely drawn for this period), viii, 452-4.

<sup>9</sup> House Journal, 37th Congress, 3rd Session, p. 186.

bill was actually introduced by Mr. Bingham, of Ohio, for this purpose, which, after being referred to a committee, was reported on February 25<sup>10</sup> and appropriated ten million dollars to carry the plan into effect. Mr. Crisfield objected, and for this and minor reasons the bill finally passed out of sight and was not brought forward again.<sup>11</sup>

But the question was not thus summarily hushed in Maryland. Emancipation now came to the fore, and remained there till the battle was fought to a finish.

"In this emergency the duty of prompt action became imperative, and even the advocates of gradual emancipation upon the President's recommendation found themselves powerless in the midst of the claims of a higher *state necessity*, which demanded the prompt abatement of the evil. . . . While compensation was beyond the ability of the state, the duty was not the less incumbent to abate a nuisance which obstructed all the avenues of agricultural, manufacturing and commercial development."<sup>12</sup>

The more radical wing of the Union party<sup>13</sup> took up the question, and the fall election of 1863 was fought on this line. The *American*, in an editorial in the issue of October 7, 1863, said: "As we predicted at the outset, the question has forced its way, has compelled attention, until at last it is the one thing dwelt upon by the first intellects in the state, by all who are candidates for place and position at the hands of the people."

As slavery was recognized and protected by the existing state Constitution (adopted in 1851) which said: "The Legislature shall not pass any law abolishing the relation of master or slave, as it now exists in this state" (Art. III, Sec. 43), a constitutional amendment was necessary to emancipation.

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<sup>10</sup> House Journal, 37th Congress, 3rd Session, 485.

<sup>11</sup> Nicolay and Hay, viii, pp. 456-7.

<sup>12</sup> Gov. Swann's inaugural address, Jan. 11, 1865.

<sup>13</sup> Not known in Maryland as the Republican party during the war.

But the Constitution had been formed and passed in an irregular and unsatisfactory manner, and was unpopular with a large number of the people, who demanded a more just and more modern instrument. In fact, there had already been several movements for a Constitutional Convention, notably in 1858, when the Legislature ordered a vote on the question of a new Constitution, and made provision for a convention in case the people were favorable, but there was a majority of over 8000 against it.<sup>14</sup> Later, the Legislature of 1862 made a strong move in this direction. During the special session in the fall of 1861 permission was, on December 11, granted the Senate "Committee on Judicial Procedure" to report a bill for taking the sense of the people on calling a Constitutional Convention. The bill was reported during the regular session on January 20, 1862, and passed its third reading on February 14. The House of Delegates amended the Senate bill, and passed it during the night of the last day of the session (March 10), seemingly returning it too late for any further action by the Senate, as we have no subsequent record of the bill.<sup>15</sup>

The radical wing of the Union party in the state had been sharp enough to see the advantage of combining the emancipation sentiment with this dissatisfaction with the State Constitution, and instead of favoring an amendment, declared for a new Constitution in a convention in Baltimore on May 28, 1862, composed of delegates from Union ward-meetings.<sup>16</sup> They carried this move further in the summer of 1863, when they formed a new political party, known as the "Unconditional Union," which embodied the idea among its principles.

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<sup>14</sup> Governor's Message, House Documents, 1864. Schmeckebier, "Know Nothing Party in Maryland," 94-6. (J. H. U. Studies, series xvii, 238-40.)

<sup>15</sup> Senate Journal (1861-2), 20, 127, 250. House Journal, 474, 894-7, Deb. 1, 581.

<sup>16</sup> Nicolay and Hay, viii, 455.

The fall campaign of 1863 was the first general state election since 1861, and hence the first opportunity for radicalism to try its strength since the general Union Party victory when Governor Bradford was elected. A Comptroller of the Treasury, a Commissioner of the Land Office, five members of Congress, a State Legislature and local officials were to be elected. A mass-meeting was held under the auspices of the Union League at the Maryland Institute, Baltimore, on April 20, 1863, which declared for emancipation throughout those parts of the country in rebellion, according to President Lincoln's proclamation of September 22, 1862, and for compensated emancipation in Maryland, according to the President's recommendation of March 6, 1862. Governor Bradford presided at this meeting and also addressed it, as did Hon. Montgomery Blair, ex-Governor Hicks, and other prominent Union men.

The State Central Committee, appointed by the Union State Convention of May 23, 1861, still controlled the party machinery, and was far too conservative to carry out the radical program. At this juncture the Union Leagues of the state stepped in, and in a convention held in Baltimore on June 16, 1863, over which Henry Stockbridge presided, boldly took their stand as "supporting the whole policy of the Government in suppressing the Rebellion." This of course included emancipation. The convention adjourned over till June 23, for which date the State Central Committee had called the regular State Convention of the Union party.

Both conventions met in Baltimore on the same day and in the same building—the "Temperance Temple" on North Gay Street.

The Central Committee Convention, refusing the Union League overtures looking toward a subsequent "fusion" convention, nominated S. S. Maffitt, of Cecil County, for Comptroller, and William L. W. Seabrook, of Frederick County, for Commissioner of the Land Office. The



Union League Convention nominated Henry H. Goldsborough, of Talbot County, for Comptroller, and also nominated Mr. Seabrook for Commissioner of the Land Office.

The division was complete, and these two factions, both loyal to the Union, had now for the present become separate parties, and could only fight out their principles at the polls. The conservatives, hereafter known as "Conditional Union," while protesting their loyalty and desire that the war be carried to a successful close, opposed President Lincoln on account of his "unconstitutional acts" in his aggressive war measures, and also opposed the radical program of emancipation and the agitation of the slavery question, preferring a policy of compromise and delay. On the other hand, they announced themselves as favoring the submission to the people of the question as to the desirability of calling a constitutional convention. The State Central Committee on September 11 issued an address to the people of the state embodying these principles. It was signed by Thomas Swann (chairman), John P. Kennedy, Columbus O'Donnell, John B. Seidenstricker, Thomas C. James, George Merryman, Augustus M. Price, William H. Stewart, and John V. L. Findlay.

The radicals, hereafter known as "Unconditional Union" men, came out for an aggressive policy, and forced their candidates to the front as standing on an uncompromising platform advocating a constitutional convention, the extinction of slavery, and complete and absolute support of the National administration. To carry this out it was absolutely necessary that they should secure a majority of the Legislature, so that they could push through a bill for submitting to the people a call for the convention. Their address was issued on September 16, and was signed by William B. Hill, Henry W. Hoffman, Horace Abbott, James E. Dwinelle, William H. Shipley, S. F. Streeter, John A. Needles, Robert Tyson, Milton Whitney and Wil-

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"Frederick "Examiner," November 4, 1863.

liam H. Baltzell. The Unconditional Union State Central Committee, authorized by the Union League Convention of June 23, organized on September 29 and issued a second address urging upon the people the principles advocated in that of September 15."

A vigorous campaign was organized by both parties, and active work immediately began.

The Democratic party was almost dead and practically without organization, and although candidates were nominated in the lower counties, and in the First and Fifth Congressional Districts, it abandoned the field in Baltimore and the northern and western counties to the two Union parties.

The campaign was most actively carried on throughout the state, the candidates and party leaders making numerous speeches, and usually urging that the result of the election would show the sentiment of the state on the dominant subjects of emancipation and a new Constitution. The newspapers supporting the Unconditional Union candidates also adopted the same tone, while those supporting the opposite side were, as a rule, very guarded in their statements, often entirely omitting all controversy, as they evidently feared repression by the military authorities. The most potent organ on the radical side was the Baltimore *American*, which printed a series of strong anti-slavery editorials," and on October 12, 1863, stated its position by saying: "The *American* is not the organ of any party—does not desire to be the organ of any party—and never has had any aspirations for party leadership. . . . Our idea is to get rid of Slavery in the state of Maryland at the earliest practicable moment that such a result can be obtained." On November 2 it further urged the people to carry the state for emancipation as the "debt of gratitude which Maryland owes the [National] Government."

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"Nelson, "History of Baltimore," 155.

"See issues of October 7, 10, 12, 20, 21, 29.

On the evening of October 28 the Unconditional Unionists closed the campaign with a large and enthusiastic mass-meeting in Monument Square, the largest held in Baltimore for years. John Lee Chapman, Mayor of Baltimore, presided, and addresses were made by Henry Winter Davis, Salmon P. Chase, General James A. Garfield, Brigadier-General E. B. Tyler, and others of local or national reputation. Strong resolutions were passed favoring the prosecution of the war, "supporting the whole policy of the [National] administration," and also saying "we are in favor of emancipation in Maryland by a Constitutional Convention," and that "the convention ought to meet and conclude its labors that the Constitution may be ratified at least by the next Presidential election." An additional clause declared that "traitors who do not acknowledge the government whose authority protects the ballot-box have no right to meddle with the elections." This was perhaps intended as a judicious hint of what followed during the next few days.

In spite of the great weight and importance of the questions involved, it has been stated by those in a position to know, that there was much less strife and animosity of party feeling than might have been expected, which can be explained by the fact that the larger part of the contestants were united in their loyalty to the Union. In addition, affairs were further complicated and party lines practically broken by a dissatisfied independent movement in Baltimore City, which nominated several candidates of its own for local offices and the Legislature. This did not obscure the dominant questions, however, which were to be decided on the election of a Comptroller.

Suddenly a different phase was put on the entire situation by the interference of an exterior force—the military—acting to some extent at least on the authority of the National Government.

On October 26, Thomas Swann, chairman of the (Conditional) Union State Central Committee, had sent the following letter to President Lincoln:

## OFFICE OF THE UNION STATE CENTRAL COMMITTEE,

BALTIMORE, October 26, 1863.

TO THE PRESIDENT.

*Sir:*—A suspicion having taken possession of the minds of many loyal Union voters of the state of Maryland, that the election about to take place on the 4th of November, will be attended with undue interference on the part of persons claiming to represent the wishes of the Government, I am induced, by what I know to be the desire of a large number of our people, and in furtherance of applications daily made to me, to ask most respectfully, that you would place me, as Chairman of the Union State Central Committee, in possession of your views upon this subject, in order that they may be communicated to loyal voters throughout this state.

I will beg you to believe, Mr. President, that it is with no doubt or distrust on my part, as to what will be your response to this letter, that I ask this favor at your hands; but simply to satisfy a large class of persons who believe that an expression of opinion on your part, would not be without its benefit to the people of the state, in promoting what we all desire, a fair expression of the public voice.

I am, with great respect, your obedient servant,

THOMAS SWANN,

Chairman of the Union State Central Committee.

The President replied on the next day as follows:

EXECUTIVE MANSION, WASHINGTON, D. C.,

October 27, 1863.

HON. THOMAS SWANN.

*Dear Sir:*—Your letter, a copy of which is on the other half of this sheet, is received. I trust there is no just ground for the suspicion you mention, and I am somewhat mortified that there could be a doubt of my views upon this point of your inquiry. I wish all loyal, qualified voters in Maryland and elsewhere, to have the undisturbed privilege of voting at elections; and neither my authority nor my name can be properly used to the contrary.

Your obedient servant,

A. LINCOLN.

Major-General Robert C. Schenck had been placed in command of the Middle Department, Eighth Army Corps, on December 17, 1862, with headquarters in Baltimore, and had been most active in his support of the National Government, as well as in using severe and stringent means to suppress all traces of disloyalty. This, of course,

had aroused bitter opposition in the Southern sympathizers and also the more conservative Union people of the state, who were stated above as opposing the policy of the administration. On the other hand, the outspoken Unionists had, in many cases, enthusiastically supported General Schenck. A good instance of this is found in the fact that, when in July, 1863, he levied damages on known Southern sympathizers in Harford county to reimburse their Union neighbors for wanton destruction of their property by unknown persons," the Second Branch of the City Council on August 10 passed unanimous resolutions thanking him for this severe measure, and endorsing his administration."

Now, on October 27, 1863, General Schenck issued his famous "General Order No. 53," in which he practically took military control of the ballot-box in the coming election. After stating that "It is known that there are many evil-disposed persons now at large in the state of Maryland who have been engaged in rebellion against the lawful Government, or have given aid and comfort or encouragement to others so engaged, or who do not recognize their allegiance to the United States, and who may avail themselves of the indulgence of the authority which tolerates their presence to embarrass the approaching election, or through it to foist enemies of the United States into power," it was ordered, first, that provost-marshals and other military officers "arrest all such persons found at, or hanging about, or approaching any poll or place of election on November 4, 1863;" second, that these officers should require of voters who were challenged on the ground of disloyalty the following oath: "I do solemnly swear that I will support, protect and defend the Constitution and Government of the United States against all enemies, whether domestic or foreign; that I hereby pledge my allegiance, faith and loyalty to the same, any ordinance, resolution, or law of any State Convention or State Legislature to the contrary

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<sup>10</sup> "Sun," July 30, August 8.

<sup>11</sup> "Sun," August 11.

notwithstanding; that I will at all times yield a hearty and willing obedience to the said Constitution and Government, and will not, either directly or indirectly, do any act in hostility to the same, either by taking up arms against them, or aiding, abetting, or countenancing those in arms against them; that, without permission from the lawful authority, I will have no communication, direct or indirect, with the states in insurrection against the United States, or with either of them, or with any person or persons within said insurrectionary states; and that I will in all things deport myself as a good and loyal citizen of the United States. This I do in good faith, with full determination, pledge, and purpose to keep this, my sworn obligation, and without any mental reservation or evasion whatsoever." Thirdly, it was ordered that judges of election refusing to carry out this order were to be reported to headquarters.

As General Schenck and his officers had openly advocated the election of the Unconditional Union ticket, this order was, aside from all expediency, most unfair to the loyal citizens in the Conditional Union and Democratic parties. It was naturally greeted with a storm of protests by them, and execrated from one end of the state to the other. The radical Union men, aside from political influences, generally endorsed it, urging that the importance of the full support of the Union by Maryland was far more important than any matters of local liberty and freedom.

Governor Bradford, a man of undoubted loyalty, who had courageously upheld the Union cause without compromise, and was in personal and friendly communication with the military authorities, had received no intimation in regard to the order.<sup>22</sup> This was rather bad treatment, for the chief magistrate of the state certainly deserved at least the courtesy of a proper notice that the state laws were to be superseded by military direction, especially since

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<sup>22</sup> Governor's Message, Senate and House Documents, 1864.

he had openly espoused the cause of a new Constitution and emancipation early in the fall campaign. Entirely in the dark as to the course of events,<sup>28</sup> Governor Bradford unknowingly followed the example of Thomas Swann, and on October 31 wrote President Lincoln, stating that rumors were current to the effect that the military forces were to be present at the polls, and protesting against the same, also saying: "As there is no reason, in my opinion, to apprehend any riotous or violent proceedings at this election, the inference is unavoidable that these detachments, if sent, are expected to exert some control or influence in that election." The letter protested against any "restrictions or qualifications on the right of suffrage," and added that, judging from the President's previous course, he thought any orders issued must be without his knowledge.

On November 2 Mr. Lincoln wrote in answer to this letter, that he had conferred with General Schenck, who had assured him that it was almost certain that violence would be used at some of the voting places on election day unless prevented by his provost guards. Further, he justified his position with reference to his policy in the past on the ground that the laws of Maryland required no test of loyalty, and added that General Schenck's order "assumes the right of voting to all loyal men, and whether a man is loyal, allows that man to fix by his own oath. . . . I revoke the first of the three propositions in General Schenck's General Order No. 53," not that it is wrong in principle, but because the military being, of necessity, exclusive judges as to who shall be arrested, the provision is liable to abuse. For the revoked part I substitute the following: That all provost marshals and other military officers do prevent all disturbance and violence at or about the polls, whether offered by such persons as above described, or by any other person or persons whatsoever.

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<sup>28</sup> It appears that General Schenck's order was not at once generally published.

<sup>29</sup> See page 20.

The other two propositions of the order I allow to stand. General Schenck is fully determined, and has my strict orders besides, that all loyal men may vote, and vote for whom they please."

Thus rebuffed, and recognizing the futility of any further attempt to persuade the national and military authorities to recede from their position, Governor Bradford immediately issued (November 2) a lengthy proclamation "To the Citizens of the State, and More Especially the Judges of Election," a large part of which had been prepared beforehand. In this document he protested strongly against the military order and its provisions as most obnoxious and entirely without justification, "more especially offensive and dangerous in view of the known fact that two at least of the five provost-marshals of the state are themselves candidates for important offices, and sundry of their deputies for others." The attention of the Judges of Election was called to the fact that "they are on the day of election clothed with all the authority of conservators of the peace, and may summon to their aid any of the executive officers of the county, and the whole power of the county itself, to preserve order at the polls, and secure the constitutional rights of voters." They were also reminded of their oath to observe the laws of the state, that the elections be so conducted as to permit the qualified voters to fully cast their ballots, and that there was absolute legal prohibition of military at or near the polls. The original proclamation closed with the two following paragraphs:

"Whatsoever power the state possesses, shall be exerted to protect them" for anything done in the proper execution of its laws.

"Since writing the above I have seen a copy of the President's letter to the chairman of the Union State Central Committee, bearing the same date with the order, and evidently showing that the order was unknown to him,

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<sup>22</sup> i. e. Judges of election.



that it would not have been approved by him if he had known it [beforehand?] and that it is, therefore, all the more reprehensible."

A postscript was added containing the modification by the President of General Order No. 53, as has been already stated.

Military orders were immediately sent to the Eastern Shore, against which it was claimed the General Order had been especially directed (as martial law had never been declared in this part of the state) ordering that the circulation of the Proclamation be suppressed. An embargo was laid on all steamers trading with that part of the state, and the newspapers were forbidden to publish it.<sup>28</sup> However, Governor Bradford issued it in pamphlet form on the same day,<sup>29</sup> and it was finally permitted to appear in the Baltimore papers on the morning of the election (November 4). This action on the part of the military authorities is explained by General Schenck in a reply published by him on November 3, in which he stated that he desired that there should go out with the Governor's proclamation the letter from President Lincoln to Governor Bradford on the subject of the action of the military. He added that the simple purpose of the order was "to prevent traitorous persons from controlling in any degree by their votes, or taking part in the coming election." Further, in order to secure peace and good order at the polls, the officers entrusted with this duty were in every case furnished with written or printed instructions containing the following: "The officers and men are cautioned not to commit or permit any unlawful violence. They must not enter into political discussions, and are to remember that while protecting the polls from rebel sympathizers, they are conservators of the peace, and are there to support the judges of election."

This public controversy ended here, but the results of

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<sup>28</sup> Governor's Message, Senate and House Documents, 1864.

<sup>29</sup> "Sun," November 4.

conflicting authority and such an uncertain and complicated state of affairs were as might easily have been foreseen.

The election took place, as stated above, on Wednesday, November 4, 1863, and resulted in an overwhelming victory for the Union ticket.

Goldsborough, for Comptroller, received 36,360 votes, and Maffitt, 15,984, an Unconditional Union majority of nearly 20,000. In Baltimore City, the vote was 10,545 for Goldsborough, and 367 for Maffitt. A majority of the state Legislature also was in favor of the Constitutional Convention and emancipation. John A. J. Creswell, Edwin H. Webster, Henry Winter Davis, and Francis Thomas, the Unconditional Union candidates in the first four districts respectively, were elected to Congress, Webster and Davis with practically no opposition, but the Fifth District went Democratic, Benjamin G. Harris being successful against his Conditional and Unconditional Union opponents. Goldsborough's majority was about ten thousand less than that of Governor Bradford in 1861, but the Democratic votes cannot be compared, as that party had no candidates for state officers in 1863. The entire Union vote (of both parties) was practically the same in 1863 as in 1861, although the total vote was only about half that of the Presidential election of 1860. Part of this decrease was of course caused by lack of Democratic nominations and also the numbers of secession sympathizers who had gone South to enter the Confederate service; but fear of the military at the polls, or the intimidation practiced by it (of which there is absolute proof) were the greatest causes, the number not voting at this election for these latter reasons being estimated at about one-third of the total vote in many districts of the state.<sup>28</sup> Allowing absolute fairness at the polls, and even this entire amount throughout the state as going solidly for Maffitt, Goldsborough would still likely have won by a good round majority, so that the mili-

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<sup>28</sup> See evidence in contested election cases, House Documents, 1864; also contemporary newspapers.

tary force used did not materially affect the final result as much as might have been expected, except in the First Congressional District (Eastern Shore), where it is perhaps doubtful if Mr. Creswell could have defeated Mr. J. W. Crisfield, his opponent. The complexion of the Legislature under these different conditions is a mere matter of guess work, for although it is nearly certain that the House of Delegates would have still been favorable to the call of a convention, yet the Senate remains an entirely uncertain quantity. It is hardly necessary to state that the above speculations refer only to the action in this election of the nominally loyal voters, large numbers of whom were opposed to the Unconditional Union platform. As said at the beginning, it is impossible accurately to estimate the sentiment at this time of the total population of the state.

In Baltimore City, the day of the election was very quiet. The saloons were all closed, and the military at the polls, under the immediate supervision of General E. B. Tyler, is said to have neither intimidated nor attempted to obstruct those who offered to vote.<sup>20</sup> The *American* of November 5 says: "Tickets of all kinds were in abundance at the polls, and all loyal men voted their sentiments freely, so far as the choice of candidates was concerned. . . . Mr. Maffitt, the representative of the slave-holding interest, was scarcely regarded as a candidate in the contest." The city police, as well as the soldiers on duty at the polls, were under strict orders to refrain from electioneering, and to preserve the peace in every way.

As stated above,<sup>21</sup> the main force of General Schenck's order seemed to be directed against the Eastern Shore. A force of infantry or cavalry was sent to each of the eight counties on that side of the bay, and detachments under command of subaltern officers were stationed at the various polls.<sup>22</sup> The following proclamation<sup>23</sup> was issued by Lieu-

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<sup>20</sup> See daily papers.

<sup>20</sup> Page 28.

<sup>21</sup> Report Senate Committee on Elections, Doc. "D", 1864.

<sup>22</sup> "Documents Accompanying Governor's Message," House and Senate Doc., 1864.

tenant-Colonel Tevis, commanding the 3rd Maryland Cavalry, and circulated in Kent and Queen Anne's counties:

HEADQUARTERS 3RD MARYLAND CAVALRY,

CHESTERTOWN, November 2, 1863.

Whereas, the President of the United States, in reply to a letter addressed to him by Hon. Thomas Swann, of Baltimore City, has stated that all loyal qualified voters should have a right to vote, it therefore becomes every truly loyal citizen to avail himself of the present opportunity offered to place himself honorably upon the record or poll books at the approaching election, by giving a full and ardent support to the whole Government ticket, upon the platform adopted by the Union League Convention. None other is recognized by the Federal authorities as loyal or worthy of the support of any one who desires the peace and restoration of this Union.

[Signed]

CHARLES CARROLL TEVIS,

Lt.-Colonel Commanding.

Colonel Tevis was afterwards put under arrest by order of General Schenck, on the charge of acting in excess of orders, but was soon released, presumably without trial.<sup>22</sup>

This so-called "Government Ticket" was in several, if not all, of the counties in the First Congressional District, printed on yellow paper, and in some instances known Southern sympathizers were allowed to vote if they voted this ticket, while known Unionists were excluded for refusing to do so.<sup>23</sup> There seems to have been no regularity of procedure by the military, in some districts only those tickets being thrown out which contained the name of Mr. Crisfield for Congress, while in other places the procedure was changed to support certain candidates for local offices. For instance, in several districts of Somerset County, the provost-marshal in charge, who was a candidate on the radical ticket for sheriff of the county, announced that no one who would vote for him should be molested. The Democrats shrewdly promised to put the man on their ticket,

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<sup>22</sup> "American," November 6 and 10.

<sup>23</sup> Senate and House Documents, 1864.

and were allowed to vote without any difficulty, but when the votes were counted it was found that this practical politician was sadly tricked, as nearly all the Democratic ballots showed no trace of his name. At Princess Anne, Somerset County, the judges of election were arrested, and the polls closed when only one citizen had voted. General Lockwood soon after released the prisoners, but the citizens of the whole district were deprived of voting. Several Union candidates in Kent County were arrested by order of Captain John Frazier, Jr., himself a candidate for a county office. They were carried to Baltimore, but were immediately released by Colonel Donn Piatt, General Schenck's chief-of-staff, who not only showed surprise, but disavowed responsibility for the action. Captain Frazier, as in the case of Colonel Tevis, was later arrested for this by General Schenck, but we could find no record of the final outcome of the matter, as in all probability it also was soon passed over.

Numerous other instances might be mentioned, as they were well brought out in contested election cases," but perhaps enough has been given to show the general character of the outrages. There were several isolated cases in other parts of the state, as in Frederick and Prince George's " counties, but nothing on so large a scale and with such bold effrontery as in the First Congressional District.

As a result of the conflict of authority between Governor Bradford and General Schenck, there was no regularity in the requirement of the prescribed oath. In some parts of the state every voter was required to take it, and in others it was observed very little, if at all. In a number of places on the Eastern Shore those voting the "yellow" ticket were not even challenged, while the remainder were subjected to the oath. It should be noted that there

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" See Senate and House Documents, 1864.

" Debates, iii, 1735-6.

is no record of any violence or breach of the peace on the part of the citizens of the state. This was no doubt partly the result of intimidation, but also showed the admirable power of self-restraint and the law-abiding character of the people. Although, as stated above, the general result throughout the state was not materially affected by this use of armed force, yet the great question is as to who was originally responsible for the move, and to what extent it was justified. After a careful weighing of the evidence, our opinion is that President Lincoln and General Schenck used the military merely to keep disloyal citizens from voting, a proceeding which may partly be justified as a legitimate political move to strengthen the hands of the government in time of war. The policy of the administration in regard to the other border states tends to confirm this view."

The Baltimore *American* repeated the strong argument that had been urged by President Lincoln in support of this measure, by saying in an editorial on November 23, 1863: "The very fact that the laws of the state provided no remedy for its protection against the arts of treason as lately displayed at the polls, constituted an imperative and all-sufficient reason why the general government should provide some remedy for so unexpected and grave a disability."

The great mistake, and the one for which General Schenck deserves severe censure, if not positive condemnation, is found in the fact that he not only openly espoused the cause of the Unconditional Union party, but actually made political speeches at various meetings in different parts of the state, and urged the people to vote for Goldsborough and the other candidates on that ticket. He also allowed his officers to do the same.\* It would be hard to

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\* Nicolay and Hay, "Life of Lincoln," viii, 420, 427-8, 432-3, 441, etc.

\*\* See "Sun," Aug. 17, Oct. 29; "American," Oct. 9, 15, 16, 19, 23, 29.

justify this on the ground of zeal for a good cause. No wonder Colonel Tevis spoke of the Unconditional Union as the "Government" ticket in his very original proclamation at Chestertown.

On the other hand, it must be said in General Schenck's defense, that he was hardly in any direct manner responsible for the outrages on the Eastern Shore, although he himself by his own actions practically laid the way open for the frauds of the unscrupulous local politicians and their supporters among the military. These in all probability formed a part of that band of "loyal citizens" who urged upon him the necessity of the military possession of the polls, as he stated in his proclamation of November 3, already mentioned.\*

It is interesting to note that precisely the same order as "Number 53" was issued by General Schenck to govern the election held in Delaware" on November 19, 1863. Far from protesting against this action, the Governor of the state officially endorsed it as follows: "

STATE OF DELAWARE, EXECUTIVE DEPARTMENT,  
DOVER, November 13, 1863.

All civil officers and good citizens of this State are enjoined to obey the above military order, issued by the Commanding General of the Middle Department, and to give all needful aid for the proper enforcement of the same.

WILLIAM CANNON.  
Governor of Delaware.

An attempt was made to induce Governor Bradford to refuse to give certificates of election in view of the undoubted irregularities at the polls, but after seeking the advice of Hon. Reverdy Johnson the Governor declined to accede to this, alleging lack of power, and that his duties were merely ministerial in cases of this kind.

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\* Issued by Gen. Schenck in answer to the Governor's proclamation (see page 23). Further particulars on this subject in Governor's message, 1864.

\* Also in the jurisdiction of the Middle Department.

" "American," Nov. 17, 1863.

The Legislature met at Annapolis on January 6, 1864, and soon after organized. John S. Sellman, of Anne Arundel was elected President of the Senate, and Thomas H. Kemp, of Caroline, Speaker of the House of Delegates. Governor Bradford's message was a long and able document. It contained, in addition to the usual discussion of the financial and other economic affairs of the state, an account of the controversy and difficulties at the previous election, with some condemnation of the military authorities. Some suitable action on the part of the Legislature was suggested, so as to remedy military interference and prevent the use of marked ballots. The Governor also urged that a Convention Bill be speedily passed, and that a state system of education and numerous other important subjects should be carefully considered.

In the House of Delegates, Mr. Stockbridge, of Baltimore City, on January 8 offered an order that so much of the Governor's message as related to a Constitutional Convention be referred to a select committee of five members, to be appointed by the Speaker, with authority to report by bill or otherwise. This was adopted, and on the 12th the following committee was appointed: Messrs. Stockbridge (chairman) and Jones, of Cecil; Trail, of Frederick; Tyson, of Howard, and Frazier of Dorchester.

This committee reported a bill on January 15, which provided for a vote of the citizens of the state on the question of calling a Convention, and for the election of delegates on the same day. Mr. Tyson presented a minority report, around which the opposition at once assembled all its strength, as it was a measure of delay, providing for a special vote to decide for or against a Convention, with the addition that in case of a favorable result the Governor was to inform the Legislature of the fact at a special session or at the next regular one. This body then *might* provide for the election of delegates and the assembling of such a Convention. The contest lasted for some days and was quite bitter. The minority report, offered in the form of



amendments to that of the majority, was defeated on January 20 by a vote of 20 in favor to 50 opposed. After long and excited debate and continued negotiation with the Senate, the House finally, on February 3, passed the bill on its third reading by a vote of 43 to 17.

The Senate early appointed a committee to confer with a like one from the House on the subject of the recommendation for a Convention contained in the Governor's message. A joint bill was reported on January 18, and considered by the Senate at various times, till finally the bill passed by the House was received. Numerous propositions went back and forth between the two Houses till finally, at the suggestion of the House of Delegates, a conference committee was appointed on the morning of February 8. The differences were at once adjusted, and the committee report sent in that evening was immediately adopted by the Senate by the vote of 14 to 2. The House received the report on the next day, and adopted it, yeas 43, nays 15, accepting the minor Senate provisions as to delegates, etc.

The Convention Bill, as finally passed, contained the following provisions: A vote was to be taken on the first Wednesday of April (6th) at the usual places and in the legal manner on the question of holding a Convention. At the same time, delegates to this Convention were to be elected, the qualifications being the same as those necessary for a seat in the House of Delegates, and the number the same as the total representation in both Houses of the Legislature. In making returns of votes, the judges of election were to certify, under oath, whether there was military interference (except on demand of the civil authorities), in case of which the Governor was to order one or more new elections in the districts affected till that interference was discontinued. An oath of allegiance was required of all voters challenged on the ground of disloyalty. If the vote at the election was favorable to a Convention, the Governor was to issue a proclamation, calling it to meet in Annapolis

on the last Wednesday of April (27th), 1864. Sixty-five delegates of the total of ninety-six were to be elected before the Convention assembled, and fifty members were necessary for a quorum. No delegate was to take his seat till he had taken before the Governor a certain stringent oath of loyalty. The compensation was five dollars a day and the mileage allowed members of the Legislature. A reporter of debates and proceedings was to be provided by the Convention. The Constitution and form of government adopted was to be submitted to the legal and qualified voters of the state "at such time, in such manner, and subject to such rules and regulations as said Convention may prescribe." In case of the adoption of the new Constitution, the Governor was to issue a proclamation to that effect, and take the necessary steps to put it into operation. At the elections provided, the tickets were to be printed on white paper, other ballots not to be received, and heavy penalties were imposed on those judges of election or other civil officers who failed to do their prescribed duty.

The campaign, in consequence of the above, began early. As the state had declared for emancipation by the previous fall election, the question now before the people was in regard to the form that this action was to take. The Unconditional Union party of the state boldly took its stand in favor of immediate emancipation without either compensation of slave-owners or "negro apprenticeship," and the election, in a great measure, favorably settled this as far as the people were concerned.

The Conservative Union State Central Committee, at a meeting held in Baltimore on December 16, 1863, led by Thomas Swann and John P. Kennedy, had declared for immediate emancipation in the manner easiest for master and slave, since the people had willed it at the last election. This evidently in large measure accounts for the fact that in Baltimore City and several counties there were merely "Union" candidates, with no opposition. In others of the counties, however, there were three tickets—"Uncon-

ditional" and "Conservative" Union and Democratic. As in the previous election, the Democrats were not organized throughout the state, their nominations for Convention delegates being mainly in the lower counties. They had no candidates in Baltimore City, and those in Baltimore County were withdrawn before the election, leaving the Union nominees alone in the field. Wherever there were Democratic party organizations, they generally declared themselves opposed to emancipation on any terms.<sup>a</sup> In fact, the declared tactics of those opposed to the Unconditional Union program were to delay the call of a Convention till "all the people of the state could vote," claiming that they would then defeat the movement. Failing that, they fought for compensation for slaves and some system of negro apprenticeship.

General Schenck had resigned his command soon after the election in the fall of 1863, in order to accept the seat in Congress to which he had been elected as a representative from Ohio. Brigadier-General Lockwood temporarily filled the position of commanding general till Major-General Lew Wallace was appointed to the command of the Middle Department on March 17, 1864.

General Wallace was, on the whole, more aggressive than General Schenck in the administration of his department, boldly taking his stand at the outset on the public declaration that a "rebel and a traitor had no political rights" whatever. However, on March 30, 1864, he wrote a letter to Governor Bradford, saying that he was anxious to frustrate the attempts of disloyal persons (some of them candidates) to vote on April 6, and asking if there were state laws and legislative action sufficient to prevent it. The Governor answered the next day, saying that the laws were entirely sufficient, if faithfully executed, as he had every reason to hope they would be, to exclude disloyal voters from the polls. Therefore General Wallace issued

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<sup>a</sup> Also see p. 63.

no general military orders like those of General Schenck, though he compelled Mr. E. G. Kilbourn, a candidate in Anne Arundel County, to withdraw on account of his questionable position in 1861 at the outbreak of the war. But like his predecessor, General Wallace also made the mistake of publicly showing his sympathy in the election, saying at an Unconditional Union mass-meeting at the Maryland Institute in Baltimore on April 1, 1864, that "so far as in him lay, the liberty-loving people of the good old state should have his assistance."

The Unconditional Union policy was a second time overwhelmingly victorious on April 6, 1864. The vote on the Convention was 31,593 "for," to 19,524 "against," a favorable majority of 12,069, but yet about 8000 less than Goldsborough's majority in November, 1863, although the total vote was about the same. The northern and western counties gave large majorities for the Convention, while the southern districts went heavily against it. In Baltimore City the vote was 9102 favorable, with only 87 opposed.\* This shows that some sort of intimidation must have been practiced, although the *American* stated "that the election proceeded very quietly in the city, perfect order being observed without even the shadow of military interference."

It appears that soldiers were well distributed throughout the state, either near the polls or within striking distance, but the cases of direct interference were not nearly so numerous, and were much more scattered than in the previous election, while there are even some records of fraud and

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\* It was claimed that the total vote was only one-third the usual number hitherto cast. Debates i, 639.

"See Steiner's "Citizenship and Suffrage in Maryland," p. 42.

"Issue of April 7. It also urged that the small vote in the city was due to lack of organization, no opposition, and to no canvassing of candidates who were seeking office. See also "Sun," Nov. 7.

"Sun," April 7; Annapolis "Republican" (quoted in "American," April 11); Frederick "Examiner," April 13; Debates i,

outrage on the part of Southern sympathizers." On the whole, intimidation rather than violence was the cause of many citizens failing to vote. The judges of election reported only one case of military interference, that in the Rockville District of Montgomery County. A second election was held in this district according to the provisions of the Convention Bill, but as the total county vote had shown a sufficient Democratic majority to elect the three candidates on that ticket without any doubt, the final result was not much affected thereby.

Out of the total of 96 delegates elected, there were 61 Union men, nearly all pledged to unconditional emancipation, and 35 Democrats, coming mainly from the southern part of the state.

Governor Bradford, immediately upon the receipt of the official returns, issued a proclamation for the assembling of the Convention on Wednesday, April 27, 1864.

The first act of the emancipation drama was now complete. As we have attempted to show, the movement was aided more by the general policy of armed restraint exercised upon the Southern sympathizers of the state by the National Government since the beginning of the war, than by any of the above-mentioned instances of military interference. The radical Union program had been a success.

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582, 639-40; ii, 915-6; iii, 1726, 1763. Scharf, "History of Maryland," iii, 579-80, gives an account of a most unfair system of challenging and questioning, aimed against those under suspicion of being Southern sympathizers. Also see Nelson, "History of Baltimore," 551-2.

"Frederick Examiner," April 13; "Sun," April 7; "American," April 7, 8.

## II.

The Convention met at the State House in Annapolis on Wednesday, April 27, 1864. Of the ninety-six members elected, eighty were present on the first day. The remaining sixteen, of whom fifteen were from the southern counties, appeared within the next week or two, with the exception of John F. Dent, of St. Mary's, who did not take his seat in the Convention till July 7, having been detained by illness in his family and other domestic causes.

It would have been difficult to have found at that time a more representative body of Maryland men, nearly all of them native-born to the state, with two striking exceptions—Henry Stockbridge, of Baltimore City, a native of Massachusetts, and Oliver Miller, of Anne Arundel, a native of Connecticut—who were prominent in the councils of the majority and minority respectively. The members from the southern part of the state in particular, were largely from the oldest and best known families of Maryland, and showed their conservatism in the fact that they formed the minority which not only opposed emancipation, but also nearly all other measures of reform introduced in the Convention.

Five of the members had been in the Convention of 1850-1 which had formed the old Constitution—Messrs. Chambers, Dennis, Dent, Lee and Ridgely—and J. S. Berry, of Baltimore County, had been Speaker of the House of Delegates of the "Know Nothing" Legislature of 1858, and at this time held the office of Adjutant-General of the state. Messrs. Goldsborough, Smith of Carroll, Briscoe and Dennis had been members of the celebrated "Frederick Legislature"<sup>1</sup> of 1861, the two former as pronounced

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<sup>1</sup> Suppressed by the military authorities.

Unionists, and the others on the opposite side. Mr. Goldsborough was now State Comptroller, having been elected at the previous fall election as we have seen. Fourteen had been members of the Legislature of a few months before, of whom Messrs. Stirling and Stockbridge, both of Baltimore City, had been most active in preparing and advocating the Convention Bill in the Senate and House respectively, while Messrs. Clark, of Prince George's, and Dent, of St. Mary's, had been leaders of the opposition to it in the House of Delegates.

In fact, it is seldom that one reads the records of events of the ten or fifteen preceding years without coming upon the names of many of those who were members of the Convention of 1864.

Taken as delegations, those from Baltimore City, Allegany and Prince George's counties were perhaps the stronger, though several others were of nearly the same excellence. Many members who had been side by side in the "Whig" and "Know Nothing" parties, or even the "Union Party" days of 1860, were now ranged on opposite sides, in this only showing the power of that mighty force which had sundered the former political ties of so many of the people of the state.<sup>1</sup> It should be said in addition, that nearly all the leaders were of the legal profession.

From the outset, the majority took a stand as supporting the Union and the National Government, especially in its policy as set forth in Mr. Lincoln's administration, and their measures were planned with the intention of keeping Maryland well in line with these ideas. These sixty-one Union members were from the northern and western counties, Baltimore City, and Talbot, Caroline and Worcester counties of the Eastern Shore, these latter three the southern slave counties in which the cause of the Convention had

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<sup>1</sup> For instance, Messrs. Chambers and Stirling were formerly Whigs, Messrs. Smith (of Carroll) and Dennis had been candidates on the Bell and Everett electoral ticket in 1860. Mr. Goldsborough was formerly a Democrat.

been successful, particularly in Worcester, where the majority had been overwhelming.<sup>8</sup> These men, while firm and aggressive in their policy and expressing a sense of great responsibility,<sup>9</sup> can seldom be accused of unfairness, as they resorted to high-handed methods in very few instances. Although relying on their large numerical superiority, they sometimes kindly informed the minority at the beginning of a debate that the final outcome was already settled, a statement more forcible than pleasant,<sup>10</sup> yet, on the whole, more fault could be found with the provisions they carried through than with the manner of doing so.

Very few regular caucuses were held by the majority members,<sup>11</sup> for they had been largely elected on and pledged to the same platform, so that they were a unit in many particulars, though differing widely on certain subjects, as the judiciary, internal improvements, etc., which will be noted later. Owing to their decided numerical superiority, it was almost entirely unnecessary to use the "party whip" or any other political methods in order to secure a majority vote. Archibald Stirling, Jr., of Baltimore City, may be regarded as their leader. He frequently closed the debate with brilliant and forceful arguments—among the best of those given in the Convention—rather "cutting" at times, but always clear and logical.<sup>12</sup> He was ably seconded by Henry Stockbridge, of Baltimore City, another of the strongest men in the Convention; John E. Smith, of Carroll; Wm. T. Purnell, of Worcester, and others scarcely less able. As stated above, the Baltimore City delegation was extremely influential as a whole, usually standing

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<sup>8</sup> 890 "for," 135 "against." We can only repeat the difficulty of saying how much of this had been caused by force or intimidation.

<sup>9</sup> Deb. i, 351-2.

<sup>10</sup> The minority often complained of their position in this respect. See Deb., i, 274, 326, 521-2, 569; ii, 764.

<sup>11</sup> Authority of Mr. Joseph M. Cushing, a surviving member of the Baltimore City delegation.

<sup>12</sup> For an opponent's estimate of Mr. Stirling, see Deb., iii, 1748.



for the most modern and advanced measures, and aroused little opposition or jealousy on the part of the county members.

The thirty-five Democrats who formed the minority, bravely, tenaciously and ably upheld their principles in a manner worthy of admiration, but always professed their loyalty to the Union as embodied in the Constitution of the United States. Their position was based on state's rights, a policy of conciliation toward the South, and, as far as possible, a continuation of political and industrial conditions as existent in the state and nation before the outbreak of the war, which they condemned as unnecessary and an oppression of the South. They asked if it was "any more treason for the South to subvert the Constitution by force of arms, than . . . for President Lincoln, with his army, to subvert the Constitution by force of arms." \*

These members came entirely from the ten southern and Eastern Shore counties of Kent, Queen Anne's, Dorchester, Somerset, Anne Arundel, Montgomery, Prince George's, Charles, Calvert and St. Mary's. These were the counties which were usually designated by the Union men as "Rebel" and "Pro-Slavery." \*

One of the majority members has since said in private conversation that the minority contained "a larger number of brilliant men for its size than any other body which has ever come together in a legislative capacity in Maryland." Though no one man stands out as their leader in the same dominating capacity as did Mr. Stirling in connection with the majority, perhaps David Clarke, of Prince George's comes nearer to this position than any other. His speeches in the Convention, when read at the present day, are of the greatest interest, as showing the attempt of a brilliant man of modern times to justify and perpetuate the institutions of a bygone age. In fact, this may be said of

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\* Deb., ii, 1357.

\* "American," May 4, 1864.

a number of the minority members. Edward W. Belt, also of Prince George's, was an exceedingly strong man, in many ways one of the most advanced of his party, as his course on the "usury" question will show.<sup>10</sup> A third man from the same county, Samuel H. Berry, and also Oliver Miller, of Anne Arundel; James U. Dennis, of Somerset; James T. Briscoe, of Calvert, and John F. Dent, of St. Mary's, were all of great force and influence. With them should be mentioned Ezekiel F. Chambers, of Kent, who always acted with the minority, and at last definitely identified himself with them, although at first claiming to represent no party. Though elderly and usually of too great conservatism, yet his prominence is apparent when we observe that he had been sixteen years in the State Legislature and in Congress; had been a member of the Convention of 1850-1, and was about to be the Democratic candidate for Governor in the fall of 1864.

The minority, in addition to opposition in debate and by vote, showed great ingenuity in falling back from one position to another, as soon as the former was made untenable. A good instance of this will be seen in the emancipation question, where a continuation of slavery, state and national compensation, and negro apprenticeship were advocated in turn. Both parties were very ready to call for the yeas and nays on leading questions, especially the minority, who desired to put their opponents individually on record as favoring the extreme measures which were passed. They also used tactics of delay in some instances, but with little success, as the majority could usually outvote them. Hence they did not carry this sort of opposition very far, knowing the final futility of any such attempts. At times vigorous complaint was made against the use of the previous question by the majority in order to shut off debate. This was largely during the latter half of the session of the Convention, when the work was being pushed with great activity.

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<sup>10</sup> See pages 82-83.

The first two months were mainly occupied with long and vigorous debate on the slavery and National allegiance questions, in which both sides expressed their views freely and often at great length. The majority frequently professed themselves as desiring perfect fairness," and the records go to show that, as a rule, such was the case." Considering the weight of the questions involved, and the close personal interest in them on the part of the members of the Convention, many of whom not only owned slaves, but had relatives and friends in the opposing armies, the debates show a remarkable lack of personal abuse and recriminations. This was at a time when the fiercest of campaigns were being waged by Grant and Lee in Virginia, and Sherman and Johnston in Georgia, while the state of Maryland itself suffered under an extensive invasion. In addition, the whole country was agitated over the political campaign preceding the presidential election of 1864, and charges of "lawless oppression" were answered with the terms of "traitor" and "Copperhead." It is pleasing to note that throughout the entire period of the Convention in Annapolis, the personal relations of the members were most pleasant. Great cordiality prevailed, and friendly discussion and quiet conversation on matters pertaining to the business of the Convention frequently took place as the members of the opposing parties met in their daily affairs outside the State House walls.

On Wednesday, April 27, as above stated, the Convention held its first meeting. Henry H. Goldsborough, of Talbot County, the State Comptroller, was elected president, receiving the entire vote of the fifty-eight Union men present. Ezekiel F. Chambers, of Kent, had been placed in nomination for the office by the opposition, but declined, and the twenty-one minority members did not vote. The remainder of the process of organization was speedily effected during the next few days. The standing com-

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<sup>11</sup> Deb., i, 118, 207, 350.

<sup>12</sup> Deb., i, 569.

mittees, authorized on April 28, were appointed on May 4, and to them were at once referred the many suggestions that had already been made by various members, as to provisions to be embodied in the new Constitution. On the same day a committee of six from the Baltimore City Council, three from each branch, presented unanimous resolutions passed by that body, inviting the Convention to hold its sessions in Baltimore, and offering to engage a hall for that purpose at the expense of the city. There was a short debate as to the advisability of the step, it being urged that Baltimore would be a much more convenient place of meeting, for the Eastern Shore members in particular. Although the contrary ground was taken that it would be illegal to move the Convention from Annapolis, yet motives of expediency really prevailed, and the invitation was declined by a non-partisan vote of 51 to 35.<sup>12</sup>

On June 2 an unsuccessful attempt was made by several members to reconsider this action, but nothing further came of it.<sup>13</sup> On May 12, Mr. Kennard, of Baltimore City, made the report of the Committee on Rules.<sup>14</sup> This report embodied the usual rules governing legislative bodies, and was finally adopted with slight amendments on May 23.<sup>15</sup> Provisions for the Constitution were required to be passed by a majority of the members *elected* to the Convention, but this was afterwards changed by motion of Mr. Cushing, of Baltimore City, to a majority of those *present*.<sup>16</sup> The minority strongly opposed this, claiming that, as fifty members would make a quorum, twenty-six out of the ninety-six elected could thus put a final provision in the Constitution.<sup>17</sup> The first vote on the question was adverse, but being brought up again under a slightly different form, it was passed by a vote of 47 to 33, though several of the majority opposed the measure. The majority based their

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<sup>12</sup> Proceedings, 19-21.

<sup>14</sup> Proc., 147; Deb., i, 300-1.

<sup>13</sup> Proc., 46-56.

<sup>15</sup> Proc., 90.

<sup>17</sup> Proc., 109-10, 115-8; Deb., i, 180-5, 202-12.

<sup>16</sup> Deb., i, 181.

main argument on the desire to expedite business. It should be added, that during the consideration of the report the minority made every possible attempt to have a large vote of those elected to the Convention required on all important questions, but their amendments to that effect were regularly voted down.<sup>29</sup> They thus lost all opportunity for delaying proceedings by absence from the Convention and like expedients.

Almost two months were consumed before the Convention had perfected its organization and passed the Declaration of Rights which contained the very important provisions in regard to slavery and allegiance. During the first five weeks of the session the debate was unlimited, both sides indulging in speeches of great length, but on June 2 the time was limited to one hour, the minority voting in the negative, as it seems to have been particularly desired that absolute freedom be allowed until the Declaration of Rights was disposed of.<sup>30</sup> The majority again urged expediency, and the usual arguments were successively brought up later, when the debate was further restricted, on July 7,<sup>31</sup> to thirty minutes, a two-thirds vote of the members present being necessary to allow the speaker to proceed. On July 29 a limit of fifteen minutes during the discussion of a basis of representation was imposed,<sup>32</sup> and definitely placed at twenty minutes on all questions on August 24.<sup>33</sup> On August 31 the absurdly small limit of five minutes was attempted but voted down, the negative vote being cast by the solid minority and several majority members. On July 7, Mr. Belt, of Prince George's, had offered the sarcastic motion that "there shall be no debate on any subject whatever," which was of course lost.<sup>34</sup>

The Convention adjourned over from June 4 to the 9th, on account of the Republican National Convention, to which several of its members were delegates. That body

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<sup>29</sup> Proc., 75-6.

<sup>31</sup> Proc., 230-2.

<sup>32</sup> Proc., 356.

<sup>30</sup> Proc., 146-7; Deb., i, 293-300.

<sup>33</sup> Proc., 562.

<sup>34</sup> Proc., 232.

met in the Front Street Theatre, Baltimore, on June 7, 1864. It adopted a platform strongly urging the prosecution of the war and endorsing the policy of the National Administration. After nominating Lincoln and Johnson, it adjourned on June 8.

The Convention again, on June 24, adjourned over till July 6, as a number of the members desired time to attend to personal affairs, especially the farmers, who had their crops to harvest.<sup>22</sup> Work had hardly been resumed, when the celebrated "Rebel Raid" occurred and interrupted proceedings for nearly two weeks more. This invasion of Maryland deserves some attention, as it was of great consequence to the people of the state, and caused a bitter clash between the opposing sides in the Convention.

During the latter part of June, 1864, General Lee sent General Jubal A. Early with a force, probably some fifteen thousand men, to move down the Valley of Virginia and make a demonstration against Washington, hoping thus to relieve the pressure of General Grant's armies upon Richmond. This force, after crossing the Potomac near Shepherdstown and Falling Waters, occupied Hagerstown on July 6, and its advance skirmished with Union troops as far as Frederick. On Friday, July 8, the main body occupied this town, and on the next day (July 9) met and defeated General Lew Wallace at Monocacy Junction. The Union force was estimated at between seven and eight thousand men, and was composed of those troops which General Wallace was able to collect in order to defend Baltimore. It behaved well in the battle which lasted nearly eight hours, but retreated in great disorder to Ellicott's Mills. The main Confederate force turned south and occupied Rockville, threatening Washington and skirmishing within sight of that city. A small cavalry force, of which Major Harry Gilmore was one of the commanders, was sent to operate north and east of Baltimore. It cut the

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<sup>22</sup> Proc., 225-6; Deb., i, 743.

Northern Central Railroad near Cockeysville on July 10, and pushed across the country, cutting the telegraph wires on the Harford and Philadelphia turnpikes. A small detachment came down Charles Street Avenue and burned Governor Bradford's handsome residence five miles from Baltimore at an early hour on the morning of July 11. This was done as a retaliation for the burning of the residence of Governor Letcher, of Virginia, by a Union force under General Hunter.

There was skirmishing on the York Road at Govans-town, a few miles from the city, and also near Pikesville, but the main part of the force struck the Philadelphia Railroad at Magnolia Station, eighteen miles from Baltimore, and captured two of the morning trains from the city; also burning the Gunpowder River bridge. They soon after retired toward the west and joining the main body of General Early's army, the whole force recrossed the Potomac at Seneca and near Poolesville, carrying a large amount of booty with them. A levy of \$200,000 had been laid upon Frederick and collected before the town was evacuated.\*

The excitement throughout the state was most intense, but at no place greater than in Baltimore City, especially on Sunday, July 10, when it was learned that General Wallace had been defeated at Monocacy. The city was startled at an early hour of that day by the general ringing of alarm bells, and in a short time the streets were thronged with excited crowds. A joint proclamation was issued by Governor Bradford, who was in the city, and by Mayor Chapman, calling upon the citizens to rally at once to resist the invaders, and the City Council, by a joint resolution, appropriated \$100,000 to aid in the defense. The call met with a ready response, and it was estimated that about ten thousand of the citizens of Baltimore were organized. Major-General E. O. C. Ord arrived in the city on Monday,

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\* See contemporary newspapers for further particulars.

and, by order of President Lincoln, assumed command of the 8th Army Corps, relieving General Wallace from that charge. Fortifications were rapidly thrown up and further preparations were hastily made, in anticipation of the threatened assault, but of course this never occurred, as General Early retreated soon after. It is said that after the first excitement there was great quiet and good order in Baltimore, affairs soon subsiding again into their usual channels. General Wallace was restored to his command on July 28.<sup>27</sup>

During this raid most of the Convention members left Annapolis, and no regular meetings were held for ten days. President Goldsborough and a few members remained in the town, and by meeting and adjourning from day to day, kept the organization of the Convention intact, till business was resumed on July 19. Mr. Goldsborough and several others also did duty in the fortifications of Annapolis. As a result of the invasion, some effect on the temper of the Convention was to be expected, and this was not long in appearing. On July 9, before the nearness of the danger caused the Convention to scatter, Mr. Cushing, of Baltimore, offered a resolution protesting loyalty to the Union, and "preferring rather than consent to the destruction of the Union of these United States, to have the whole land laid waste and its entire population destroyed, hoping that in the future, it might be resettled by some race of men more capable of appreciating and preserving Liberty and Union." Further, all sympathizers with the rebellion were denounced as "recreant to the faith of their Fathers, forsaken of God, and instigated by the devil." There was some difficulty in securing a quorum, as the attendance was small on that day, but in spite of a minority attempt to adjourn, the resolution was successfully passed.<sup>28</sup>

On July 19, immediately after business was resumed,

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<sup>27</sup> See contemporary newspapers for further particulars.

<sup>28</sup> Proc., 247-9.



there was another outburst of great anger on the part of the majority. By motion of Mr. Hatch, of Baltimore City, thanks were tendered to Ishmael Day, of Baltimore County, "for the heroic and gallant act in shooting down the traitor who dared to pull down the country's flag." Mr. Schley, of Frederick County, offered an order that the Convention request the President, "as an act of justice and propriety, to assess upon known sympathizers with the rebellion resident in this state, the total amount of all losses and spoliations sustained by loyal citizens of the United States resident in this state, by reason of the recent rebel raid, to compensate loyal sufferers." This was passed by a vote of 33 to 17, the minority solidly opposing it.<sup>20</sup> On the following day Mr. Belt offered a resolution that this order "was improvidently passed, and that the same be and is hereby rescinded," but it was overwhelmingly defeated by the majority members.<sup>21</sup> On this same day Mr. Stirling submitted resolutions which, considering the number of Southern sympathizers in Maryland, as the experience of the past two weeks had shown, demanded of the Government of the United States that all those refusing to take the oath of allegiance or who shall have been "proved to have taken part with or openly expressed their sympathy with the recent invasion of the state . . . be banished beyond the lines of the army or imprisoned during the war."<sup>22</sup> These resolutions were passed on July 21.<sup>23</sup> The minority consistently fought all these extreme proceedings, the resolutions being characterized as "unjust, extraordinary and inhuman,"<sup>24</sup> and they not only voted against them, but actively opposed them in debate, urging in particular that the Convention was exceeding its authority by thus acting in a legislative capacity. Mr. Belt vainly attempted to amend Mr. Stirling's resolutions by declaring that nothing contained therein should be taken to endorse any other theory of the

<sup>20</sup> Proc., 257-8.<sup>21</sup> Proc., 267-8; Deb., ii, 830-1.<sup>22</sup> Proc., 265-6.<sup>23</sup> Proc., 273-7.<sup>24</sup> Deb., ii, 873.

war than that declared in 1861, in which state's rights had been guaranteed and the desire expressed to preserve the Union according to the ante-bellum conditions." Mr. Sands, of Howard, well expressed the position of the majority members by saying: "It comes to the question whether you will give to the loyal people of the state of Maryland the power of the state, or whether you will allow the secessionists to force them to the wall and make them give up all their rights under the Constitution and the government or drive them from the state. For one, as a Union man, holding my allegiance to the government straight through, I prefer to be one of the men that shall live in Maryland."<sup>44</sup>

On August 5, Mr. Chambers, on behalf of the thirty-five minority members, presented a protest signed by all of them, in which they strongly condemned these various resolutions. In this protest they stated that the delegates to the Convention "were elected under a law of the state, to form a new constitution of civil government to be submitted to the people, and not to invite the inauguration of an unlimited military despotism in the state." The resolutions were condemned as being in direct conflict with many provisions of the Declaration of Rights as lately adopted. The protest closed by saying: "In behalf of the people we represent, and of all the peace-loving and law-abiding people of Maryland, and in behalf of all the fundamental principles of civil liberty and constitutional government, we enter this, our formal protest, against the said action of the said delegates to this Convention."<sup>45</sup>

The majority stigmatized this protest as discourteous to the Convention, and it was refused a place upon the journal by a vote of 42 to 26, although several of the Union members opposed this latter action, and five of them voted with the Democrats." This closed the incident.

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<sup>44</sup> Proc., 273-5.

<sup>45</sup> Deb., ii, 826. For debate on the various resolutions, see Deb., ii, 800-1, 820-31.

<sup>46</sup> Deb., ii, 1128.

<sup>47</sup> Proc., 397; Deb., ii, 1126-38.

A point of much importance during the sessions of the Convention was the question as to the eligibility of certain members. It was commonly known that a number of them were ineligible, according to the Convention Bill, which imposed the same qualifications as those necessary to a seat in the House of Delegates. On July 7, Mr. Miller submitted an order requiring the Committee on Elections to make a report as to what the qualifications for a seat in the Convention actually were, but added that he meant this to be an entirely non-partisan measure, as it would equally affect both the majority and minority. This order was tabled by motion of Mr. Stirling, who stated that it would either accomplish nothing or else result in breaking up the Convention.<sup>27</sup> The Committee on Elections, which had been appointed early in the session, had as yet made no report, so on July 8 Mr. Chambers submitted an order requesting the committee to do so as soon as possible. A favorable vote on this was at once secured, but Mr. Cushing's order instructing the committee to report all members duly elected was lost by a vote of 17 to 47.<sup>28</sup> On August 3 the committee, consisting of four Union and two Democratic members, unanimously reported all the members as duly elected.<sup>29</sup> This report was concurred in on August 9 by a vote of 55 to 4, Mr. Miller being the main opponent and basing his adverse argument on legal technicalities.<sup>30</sup> On August 6 Mr. Belt had offered a resolution declaring, for reasons stated, that eleven named members were ineligible to a seat in the Convention, himself being one of the number.<sup>31</sup> This was indefinitely postponed on August 9, and never appeared again.<sup>32</sup> It is worthy of note that, although two members of the minority, Mr. Miller and Mr. Belt, were the ones who insisted on the inquiry and led in this "strict construction" movement, the final action was

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<sup>27</sup> Proc., 229; Deb., ii, 796.<sup>28</sup> Proc., 385-6.<sup>29</sup> Proc., 414-5.<sup>30</sup> Proc., 240-2.<sup>31</sup> Proc., 435-6; Deb., ii, 1195-1201.<sup>32</sup> Proc., 436.

entirely non-partisan, it being the general sentiment of the Convention that the people in their sovereign capacity had the right to elect whomsoever they pleased to represent them in that body, even the Convention Bill to the contrary, though some based their position on different interpretations of that instrument."

The Convention held one session a day till July 21, when it was decided to meet in the evening as well, on every working day except Saturday.<sup>a</sup> These latter sessions were not attended very well as a rule, there being no quorum present on eight different evenings. There was much delay in the work of the Convention, the larger part of the new Constitution as finally adopted being passed during the last six weeks of the session. The long discussion of the Declaration of Rights and the interruptions consequent upon the pressure of outside affairs as stated above, were largely responsible for this. As the people of the state were beginning to show impatience,<sup>b</sup> the general result was haste towards the end, although this caused additional mutterings. Three sessions were held each day during the five days preceding adjournment.

The Convention finally adjourned on Tuesday, September 6, 1864, having passed a resolution that, in view of the uncertain condition of affairs in the state "which might interfere with the expression of the popular will on the day to be fixed for voting on this Constitution," the adjournment was subject to the call of the president, and in case of his death or disqualification, Messrs. Schley, Pugh, Stockbridge and Purnell were authorized, in the order named, to act as president and call the Convention together."

A resolution of thanks to President Goldsborough for his "dignified, efficient and impartial discharge of the duties of the chair" was offered by Mr. Chambers, and unan-

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<sup>a</sup> "Deb., ii, 764-8; iii, 1730.

<sup>b</sup> "Proc., 272.

<sup>c</sup> "American," June 10, Aug. 2; Frederick "Examiner," June 22; Deb., i, 98, 148, 204-5, 322-4.

<sup>d</sup> "Proc., 600, 773.

imously adopted, several of the minority leaders heartily endorsing it.\* The order in the Convention had been exceptionally good."

The sessions of the Convention had lasted four months and ten days, and the average daily attendance had been about sixty. The largest number present on any one day was ninety-one, on June 1, and the smallest was seven, on July 18, at the close of the period of Early's invasion. There was numerous attempts to compel the attendance of members, to publish the names of absentees, or to deduct pay for unexcused absence, but they all came to nothing, being usually tabled by good majorities."

As stated above, there was no inducement for the minority to attempt to delay proceedings by absenting themselves from the Convention, as the majority were numerically large enough to transact business without any aid from their opponents, after the rules of order had been modified to permit the adoption of a provision by a majority of the members present.

After some vacillation and delay, showing that there must have been some compunctions of conscience on the part of several members, the Convention followed the example of the preceding legislature (1864), and by a small majority, voted themselves \$100 extra mileage." They based this action on the clause in the Convention Bill allowing them the same mileage as the Legislature, and thus threw on the other body any blame for an illegal proceeding. This action was entirely non-partisan, the leading members of both sides dividing into opposing groups on the question.

It should be added, that in compliance with the Convention Bill the debates and proceedings of the Convention were well reported, and in point of excellence far exceed many of the other state documents and reports of that time.

Having taken this survey of the sessions of the Conven-

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\* Proc., 709; Deb., iii, 1852.

" Proc., 78, 89, 157, 162-3, 183, 286, 498.

\* Deb., iii, 1757.

" Proc., 707, 715-8.

tion and its workings as a whole, we now come to the far more important consideration of the results as shown in the new Constitution submitted to the people.

The first report made by the standing committees having in charge the various provisions for the Constitution was that on the "Declaration of Rights" on May 12.<sup>23</sup> As reported, and, in fact, as finally adopted, it was largely identical with the original "Bill of Rights" adopted in 1776, and incorporated in the Constitution of 1851.<sup>24</sup>

The consideration of the report was immediately begun, and consumed more time than any other part of the Constitution, occupying the larger part of the first half of the entire session of the Convention, for it settled some of the questions that had helped to influence the call for a new Constitution.

Foremost in importance was the new article of the report, which abolished slavery in Maryland, providing that "hereafter in this state, there shall be neither slavery nor involuntary servitude, except in punishment of crime, whereof the party shall have been duly convicted; and all persons held to service or labor as slaves, are hereby declared free."<sup>25</sup> This article was reached on June 17, and was hotly debated for a week. It is hardly necessary to review the various speeches, as the usual arguments were set forth by both sides, and though most ably presented, were largely a re-statement of those heard throughout the nation during the preceding hundred years. For instance, the minority would absolutely justify slavery by long quotations from the Bible, and the majority, on the other hand, would insist that the American slave system differed radically from that acknowledged by the Scriptures. In addition, these latter members denounced the institution as immoral, unjust, and an incubus upon the life of the state. Ancient

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<sup>23</sup> Proc., 58-64. (The minority report was defeated.)

<sup>24</sup> Deb., i, 185.

<sup>25</sup> Article 23 in report, Article 24 in the Constitution as adopted.

and modern law, the Declaration of Independence and Constitution of the United States, the writings of the founders of the Republic, Supreme Court decisions, and various enactments since the formation of the Union—in fact, every conceivable authority or argument of any time or age was skilfully advanced by the advocates of the respective sides of the question. Although knowing the final outcome would certainly be against them, the minority stubbornly continued the fight till the last. They suggested the incorporation of provisions prohibiting the immigration of free negroes into Maryland, or any contracts with or employment of such persons, and providing for the colonization outside of the state of those negroes already within her borders.”

Also, Mr. Clarke offered a substitute to the emancipation article, which declared the slaves in Maryland free after January 1, 1865, but on condition that the United States Congress before that time should appropriate the sum of twenty million dollars to compensate the owners for their slaves.” This was of course opposed by the majority as it would in all probability have been a very successful means of indefinitely continuing the institution, and the amendment was withdrawn by general consent.” Mr. Brown of Queen Anne’s offered another amendment providing for state assumption of the duty of the comfortable maintenance of the helpless and paupers emancipated, but this was voted down.” The final vote on the article as reported by the committee was taken on June 24, and the provision was adopted on strict party lines by 53 yeas to 27 nays.” This action, so momentous in its consequences, was but the fulfillment by the Convention of the Unconditional Union victories of November 4, 1863 and April 6, 1864, and although it had yet to pass the same ordeal of a further ratification by the people, slavery was practically dead from that hour.

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<sup>53</sup> Proc., 79-80.

<sup>54</sup> Proc., 219, 223-4.

<sup>55</sup> Proc., 210.

<sup>57</sup> Proc., 215.

<sup>58</sup> Proc., 224-5.

Granting the fact that they should lose their slaves, the owners naturally desired to obtain some sort of compensation, and the minority never abandoned one form or other of this idea. This might be effected in two ways—by the state, or else by the nation. As state action could be controlled by the Convention to a great extent, while any reliance on Congressional action would be fallacious, the minority insisted on this former measure. On the other hand, as already stated, the spring campaign had been fought on this very question, with the result that nearly all the Union delegates were pledged against it with the exception of those from Baltimore and Howard counties, but even these were merely instructed to procure national compensation if possible. Also a majority caucus held in Annapolis on April 28 at the beginning of the session unanimously decided that the Convention was bound by the popular verdict to emancipation without state compensation.”

The minority nevertheless firmly maintained that slaves were or had been private property which should not be taken for public use without compensation.” The majority either denied this *in toto* or else held that slavery was a “nuisance,” and no payment should be given for the abatement of it.” Other arguments were brought forth by the latter, including the statement that they were unwilling to saddle the state with a large debt for this purpose,” the Baltimore delegates in particular objecting on account of the fact that while a large part of the consequent increase of taxation would fall on the city, it would receive a small portion of the compensation, owing to the comparatively few slaves within its bounds. The majority report of the Committee on the Legislative Department,

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” “American,” Apr. 30, 1864.

” Deb., i, 596-721.

” Deb., i, 590-1.

” The slaves were valued at from thirty-five to forty million dollars in 1860. Mr. Clarke's representative scheme of compensation involved a payment of about twenty-six millions (Deb., i, 656).



made a few days before, had contained the provision (section 40) that "The General Assembly shall pass no law, nor make any appropriation to compensate the masters or claimants of slaves emancipated from servitude by the adoption of this Constitution."<sup>44</sup> A minority report proposed a provision especially giving this power,<sup>45</sup> but it was voted down when introduced as an amendment.<sup>46</sup> Mr. Brown here again attempted to introduce an article providing for the maintenance of the emancipated slaves unable to support themselves,<sup>47</sup> but the majority defeated it, urging that the counties rather than the state should care for the local poor, and that the regular laws of the state dealing with this subject would be sufficient.<sup>48</sup> A motion to strike out the above section of the committee report failed, and it was adopted on July 25 by the vote of 38 to 13.<sup>49</sup> Mr. Briscoe of Calvert on August 31 made the last attempt of the minority to obtain state compensation by shrewdly offering an amendment to the provisions for the taking of the vote on the Constitution, which provided that at the same time there should be a separate vote on this question. This was promptly defeated with no debate of any consequence, the "previous question" being used.<sup>50</sup>

The minority doggedly turned next to the question of national compensation, and with slight success, for the majority members, although rather generally opposed to this as well, might have been put in an embarrassing position had they openly come out against it. It will be at once remembered that one of the great traits of the Unconditional Union party, to which most of the latter belonged, had been uncompromising support of President Lincoln's entire policy, and that necessarily included his offer of national compensation for the slaves in the border

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<sup>44</sup> Proc., 193.

<sup>45</sup> Proc., 209.

<sup>46</sup> Proc., 304.

<sup>47</sup> Proc., 306.

<sup>48</sup> Deb., ii, 954, 957; Proc., 309.

<sup>49</sup> Proc., 309-10, Article 3, sec. 36, of the Constitution.

<sup>50</sup> Proc., 669-70.

states. The Democrats in the Convention did not fail to push their advantage.

Early in the session Mr. Clarke had presented a resolution providing for a select committee to confer with President Lincoln on the subject," but Mr. Negley of Washington offered an amendment including a declaration of emancipation in Maryland, and the whole matter was tabled without debate." We have also seen Mr. Clarke's second unsuccessful attempt, in which he desired to make emancipation conditional upon national aid." But as the question of slavery within the state was now definitely settled, the majority could no longer oppose action looking toward national compensation on the ground that it affected the final result in the state, so on July 26, Mr. Duvall of Montgomery submitted a provision to be added to the legislative report allowing the General Assembly to provide for the distribution of any money received from the General Government for the purpose of compensating the slave-owners. Mr. Jones of Somerset added an amendment including among the beneficiaries the owners of those slaves which had been taken under the authority of the President for use in military and other like enterprises, but this however was lost. Mr. Stirling now grasped the situation and offered a provision which seemed to satisfy both sides and was at once adopted with only one negative vote." It was incorporated in the Constitution as Article 3, section 45, and provided that the "General Assembly shall have power to receive from the United States any grant or donation of land, money or securities for any purpose designated by the United States, and shall administer or distribute the same according to the conditions of the said grant." The motion that the General Assembly be required in addition to make some provision for perpetuating records of slave ownership was at once defeated on the ground that it was unnecessary."

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<sup>n</sup> Proc., 134.

<sup>n</sup> Proc., 319-20.

<sup>n</sup> Proc., 147-8.

<sup>n</sup> Proc., 332-4; Deb., ii, 997-1000.

<sup>n</sup> See page 53.

With the object of making as certain as possible any prospect of the desired governmental aid, the minority finally succeeded in having passed near the close of the Convention a resolution appointing a committee of seven to visit Washington and request of the President that he recommend to Congress an appropriation for the former slave-owners of Maryland." The committee was duly appointed but the compensation was never received. It should be mentioned that the majority somewhat lessened any feelings of elation which the so-called "Rebel" slave-owners might feel at the prospect of receiving "Greenbacks" from the Government, by providing that the latter should first take the oath of allegiance before receiving any such sums."

However, the minority were not at all satisfied with this small gain, but continued to use every expedient to perpetuate at least a small part of the former slave-owners' rights. With this object in view they heartily supported the project of the apprenticeship, particularly to their former owners, of negro minors. This subject was, fortunately for them, brought forward by a member of the majority. Mr. Todd of Caroline, with several others of his party, favored such a step, though the larger part of them had been pledged against it as one of the campaign issues," and opposed it as being either unnecessary under the existing state law for apprenticeship, or else a "concession to the slave power" which practically postponed the emancipation of minor slaves till they became of age." The minority on the other hand held that apprenticeship would be only a merciful provision for many helpless children, and a small measure of justice to the former owners in giving some return for the previous support of minors during their infancy. Mr. Negley and Mr. Purnell were two of the Union members who held these views." The

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" Proc., 713-5.

" Proc., 719, 771-2.

" See page 32.

" Deb., iii, 1577, et seq.

" Deb., iii, 1583, 1591-2.

movement for apprenticeship, although prominent in the minds of the members during a large part of the debate, particularly during the consideration of the questions of emancipation and compensation and of the legislative department," did not assume final form till August 26, when Mr. Todd submitted his proposition in the form of an amendment to the report of the Committee on the Judiciary Department, providing an additional section which made it the duty of the Orphan's Courts of the state to bind out till they became of age "all negroes emancipated by the adoption of this Constitution, who are minors, incapable of supporting themselves, and whose parents are unable to maintain them," with the addition that "in all cases the preference shall be given to their former masters, when in the judgment of said courts they are suitable persons to have charge of them." Amendments offered by Mr. Schley of Frederick and Mr. Stockbridge, respectively, requiring the consent of the "parents or next friend of the minor," and that masters should be bound to have their apprentices taught to read and write, were both lost. The section was divided for the vote, the first part allowing apprenticeship being carried by the vote of 51 yeas (including 28 majority votes) and 20 nays, and the second part, giving preference to the former owners, by 45 yeas (21 majority votes) to 27 nays.<sup>22</sup> On the next day (August 27) the Union men, who were evidently rallying their forces, introduced and carried by large majorities on a strict party vote two new sections, the first requiring that masters should take a stringent oath of allegiance before negro apprentices were bound to them, and the second prescribing heavy fines or punishment for those who detained in slavery any persons emancipated by the Constitution.<sup>23</sup> This latter section was incorporated in the new Constitution,<sup>24</sup> but the former one, as well as Mr. Todd's

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<sup>22</sup> Proc., 311-2.<sup>23</sup> Proc., 604-7.<sup>24</sup> Proc., 593-8.<sup>25</sup> Art. iv, sec. 12.

proposition, was finally reconsidered and defeated on September 2. The yeas and nays were demanded in the vote on the main proposition and showed that a number of the minority were now against it, the cause of this change being in all likelihood the same as that given by Mr. Chambers, who now opposed the proposition as "encumbered with loyalty oaths."<sup>\*</sup>

From the above results of the action on the slavery and emancipation questions it can be seen that although the minority skilfully advocated one point after another, and tried their best to secure some of the old privileges from the general ruin that threatened them, they were overpowered and defeated on every point of importance, and had only the poor consolation of a vague chance of national compensation which after all never came to pass.

A second great question involved in the Declaration of Rights, and one which vitally affected several of the provisions of the Constitution, was that of allegiance to the United States. The report of the committee contained the following as Article 4<sup>th</sup>—"the Constitution of the United States, and the laws made in pursuance thereof, being the supreme law of the land, every citizen of this state owes paramount allegiance to the Constitution and Government of the United States, and is not bound by any law or ordinance of this state in contravention or subversion thereof."

This declaration, enjoining upon the citizen a proper allegiance to the Constitution of the United States, which presupposes allegiance to the Government when constitutionally conducted, thus contained in addition the dangerous principle of absolutely denying any original or inherent rights on the part of the State of Maryland, which would enable it to make the least opposition to any acts the National Government might see fit to commit. While the

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<sup>\*</sup> Proc., 689-91; Deb., iii, 1797-1800.

<sup>\*\*</sup> Proc., 58. (Article 5 in Constitution as adopted.)

tendency of the present day is to cede more and more authority to the National Administration, yet there is certainly no disposition to take away all inherent power from the states as such, or vest in the Federal Government all authority not absolutely guaranteed to the state by the United States Constitution. This last is clearly the result to which the article tended.

This movement on the part of the majority was the direct outcome of the war as caused by the assertion of state's rights on the part of the South, and as waged according to the necessarily radical measures of Mr. Lincoln. Though evidently subject to the greatest abuse, it was in reality an attempt to assert the absolute indivisibility of the Union, and the paramount authority of the National Government when acting within the letter of the Constitution.

The members of the minority in the Convention, most of whom were firm believers in the doctrine of state's rights as held by the South, and in a large measure of sovereignty vested in the states as such, in some cases even went so far as to practically justify the South in its action on the question. They were naturally much aroused by this enunciation of paramount allegiance to the National Government, and were unable to condemn the article in sufficiently strong terms.<sup>27</sup> The debate on the article was long and brilliant, consuming a large part of the time for over two weeks, and was a careful treatment of the history of our country from earliest colonial times down to the causes of the war, as well as a review of the growth of justice and freedom from the days of Runnymede to the present time. Although the question was touched upon to some extent during the consideration of other subjects throughout the entire session of the Convention, Mr. Clarke on June 1 opened the regular debate

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<sup>27</sup> A minority report from the committee condemned this article in addition to the one embodying emancipation. (Proc., 63-4.)

on the article in a masterly speech of several hours duration." He began by offering an amendment in part declaring "allegiance to the Constitution and Government of the United States within the limits of the powers conferred by that Constitution," and giving to the State of Maryland sovereignty in so far as it is not restricted by the Constitution." The gist of his argument was that the states were sovereign as states, but that they had yielded up a sufficient amount of their sovereignty to the General Government to deprive them, among other things, of the power of seceding from the Union, and that the article as reported specifically deprived the states of that measure of sovereignty which was inherently theirs. This may be taken as the average position of the minority on the question, for although some, as above stated, went further in their assertion of state's rights, yet others stopped short of it, while all protested their personal loyalty to the National Constitution.

The position of the majority is so well given by the article itself that there is no necessity of restating it. Mr. Stirling closed the entire debate on this question with one of the finest speeches in the Convention," his aim being to vindicate the position of the majority, not only by upholding the doctrine of absolute national sovereignty, but by stating that the "paramount allegiance" set forth in the article as reported was merely an old and commonly recognized principle of government restated, perhaps in a novel form, but given in this way in order to meet the questions as to its very being which had been raised during the last few years in consequence of the momentous events that had happened. The declaration of this principle should be placed in the "Declaration of Rights" since the relation of the person to the National Government was one of the dearest rights pertaining to the individual. The majority tenaciously held to the article as reported, and would take

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<sup>m</sup> Deb., i, 273-92.

<sup>n</sup> Proc., 144-5.

<sup>o</sup> Deb., i, 521-32.

nothing less, for they evidently desired by this action to strengthen the hands of the President and put Maryland in the position of officially endorsing his administration.<sup>21</sup> This political consideration should not be forgotten, especially as the contemporary excitement incident to Mr. Lincoln's candidacy for a second term may have influenced the Convention. The result was, that Mr. Clarke's amendment was voted down, and also several others by means of which the minority attempted to mitigate the force of the article,<sup>22</sup> and this latter was finally adopted on June 16 by the party vote of 53 to 32.<sup>23</sup>

The third in importance and last of the new articles incorporated in the "Declaration of Rights" was that introduced by Mr. Abbott of Baltimore City on June 11, and adopted without debate on July 7, after a slight change of phraseology.<sup>24</sup> It declared—"That we hold it to be self-evident that all men are created equally free; that they are endowed by their creator with certain unalienable rights, among which are life, liberty, the enjoyment of the proceeds of their own labor and the pursuit of happiness." It was merely a broad statement of the principle involved in the article abolishing slavery.

Another very interesting change was that made in Article 2, which declares the "unalienable right" of the people to "alter, reform or abolish" the form of government which originates from them. The words contained in the old Constitution of 1850-1<sup>25</sup> which limited this popular right to the "mode prescribed" in that document were omitted. This action was not taken on strict party lines, for although nearly all the members opposing it were of the minority, yet a number of them rose above the rigid

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<sup>21</sup> See Proc., 209, for an order introduced by Mr. Hatch, of Baltimore City, with this special end in view.

<sup>22</sup> Proc., 150-1, 199-201.

<sup>23</sup> Proc., 204. (Article 5 in the Constitution.)

<sup>24</sup> Proc., 173, 233-4. (Article 1 in Constitution.)

<sup>25</sup> Declaration of Rights, Article 1.



constructionism so prevalent among the members of this last-named faction, and voted in the affirmative." The change was evidently the direct result of an argument which had been most skilfully used against calling a Convention during the campaign of the preceding spring," and was based not only on the above-mentioned clause of the "Declaration of Rights" of the old Constitution, but on Article 11 of that instrument which provided that "It shall be the duty of the Legislature, at its first session immediately succeeding the returns of every census of the United States, hereafter taken, to pass a law for ascertaining, at the next general election of Delegates, the sense of the people of Maryland in regard to the calling a Convention for altering the Constitution." As we know, the Legislature of 1861-2 had failed to do this," hence it was held by some that the succeeding body of 1864 had exceeded its authority in framing the Convention Bill, and that the Bill was unconstitutional. The advocates of the measure had at once answered the argument by taking their stand on the absolute sovereignty of the people, and their right of revolution as a last resort, urging that the acceptance of the Convention Bill at the election was sufficient to make it the supreme law of the land. This was the line of argument followed during the debate on the revision question in the Convention, it being stated in addition that it might with equal ease be proved that the Constitutional Convention of 1850-1 had been revolutionary, as it had not been called according to the provisions of the Constitution of 1776."

The other facts of importance which should be mentioned in connection with the "Declaration of Rights" as adopted are, first of all, that Article 7 still confined the right of suffrage to the free *white* male citizens. Again, the general sentiment of the Convention was without re-

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<sup>10</sup> Proc., 90, 94-6; Deb., i, 133-46, 149-60.      <sup>11</sup> Deb., i, 134, 390.

<sup>12</sup> See page 13.

<sup>13</sup> Deb., i, 140-1, 150-5.

gard to political lines, largely opposed to any poll-tax,<sup>100</sup> so the prohibitory clause was retained in Article 15 with a slight change of phraseology.<sup>101</sup> Article 22 limited the declaration against compulsory evidence to criminal cases thereafter, in order to conform to the laws as it stood in the Code, by which any party might in any civil case be compelled in a Court of Common Law, as well as in Equity, to give evidence against himself. Article 27 was changed to allow forfeiture of estate for treason, a thing heretofore not allowed in Maryland for any cause.<sup>102</sup> The minority of course opposed this change, Mr. Chambers in particular leading in the debate against it, the ground taken being that it would be an inhuman and unjust treatment of the innocent wife and children of a man convicted. Mr. Clarke made an effort to amend the article by having the forfeiture of estate only continue during the life of the person convicted, but was unsuccessful,<sup>103</sup> as the majority could not leave open this chance for future questioning of the various confiscations of "rebel" property. Article 31 changed the phraseology in regard to quartering soldiers in time of war, by providing that the manner should be "prescribed by law," thus corresponding literally with the third amendment to the Constitution of the United States. The words formerly used had been "as the Legislature may direct."<sup>104</sup> The requirement of a test oath of allegiance both to Maryland and the United States, was inserted in Article 37, which treated of the tests or qualifications required for office. The minority opposed this. An additional change was made in the same article by omitting the word "Jews" and allowing all persons, with-

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<sup>100</sup> Deb., i, 168-80, 190-201, 217-20. Mr. Jones, of Somerset, favored an income tax (Deb., i, 188-9).

<sup>101</sup> Proc., 106-8, 110-4, 123-5.

<sup>102</sup> Article 24 in Constitution of 1850-1.

<sup>103</sup> Proc., 131, 138-41; Deb., i, 239-47, 249-70.

<sup>104</sup> Proc., 158-9; Deb., i, 356-60 (observe the different numbering of the articles in the report of the committee, etc.).

out distinction to make a declaration of belief either in the Christian religion, or in the existence of God, and in a future state of rewards and punishments.<sup>108</sup> Article 40 added to the provision for the liberty of the press a clause making a person responsible for the abuse of this right.<sup>109</sup> Article 43 declared the encouragement of a judicious system of general education to be among the duties of the Legislature, and Article 45 prohibited only the Legislature from altering the Constitution except in the manner prescribed or directed. This left to the *people* the inalienable right of changing their form of government and thus conformed to Article 2, as modified in the manner stated above.<sup>107</sup>

To sum up, it should be said that the changes in the "Declaration of Rights," as given above, show first a decided movement toward an increase in the civil liberty of the individual by the abolition of slavery, the vesting of final sovereignty in the people, and the broadening of the religious test in an oath or affirmation. Secondly, there was a somewhat counter tendency toward strong centralization of power in the National Government, and also an entire submission to and approval of the war policy of President Lincoln.

The Constitution itself, in establishing a form of government for the State of Maryland as contrasted with the previous document of 1850-1, shows a number of interesting changes, which were in part the immediate results of the Civil War, and in part caused by a growing spirit of progress in the state, which was at times reflected in the Convention, where provisions were suggested which would have been years in advance of the average opinion of the people. In considering these various changes the order of

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<sup>108</sup> Proc., 165-6; Deb., i, 371-82.

<sup>109</sup> Proc., 167-9, 172-3; Deb., i, 393-400 (articles "39" and "45" [46] combined into Article "40"—Proc., 434).

<sup>107</sup> See pp. 62-63.

the Constitution will be followed in part, and in part a grouping by subjects.<sup>108</sup>

Article 1, on the Elective Franchise, largely followed the plan of the corresponding article in the preceding Constitution. It also contained one of the best of the new provisions, that requiring the General Assembly to provide for an uniform registration of the names of the voters of the state, a thing as yet unknown in Maryland. This registration was made the evidence of the qualification of citizens to vote at all elections.<sup>109</sup> In relation to bribery, section 5 of the same article added to the former prohibitive provision a clause disfranchising a person guilty of fraud in procuring for himself or any other person a nomination for any office. This was the result of a motion by Mr. Stockbridge, who desired to incorporate in addition the application of this provision to primary meetings and nominating conventions, an advanced reform movement only beginning to be considered at the present day. The Convention voted it down as impracticable.<sup>110</sup>

The oaths of allegiance for voters and public officials as contained in this article were perhaps the most unpopular feature of the Constitution, and did more to cause its reluctant acceptance by the state and its final abrogation in 1867<sup>111</sup> than any other one thing in connection with it. They were of course the direct outcome of the war and only applicable to the conditions arising at that time. General Schenck's much-discussed order governing the elections of 1863, the various invasions and raids into

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<sup>108</sup> The entire new Constitution, as adopted, may be found in *Proc.*, 721-70.

<sup>109</sup> *Proc.*, 434, 513, 686; *Deb.*, iii, 1784. This provision was carried out by the Legislature of 1865. See Steiner, "Citizenship and Suffrage in Maryland," pp. 47-8.

<sup>110</sup> *Proc.*, 510-1; *Deb.*, ii, 1381-3. Mr. Miller had desired to make voting compulsory by an article in the "Declaration of Rights," *Proc.*, 111-2.

<sup>111</sup> The present Constitution of Maryland was formed in that year.

Maryland by Southern forces during the last two years, and the many instances of divided sympathy consequent upon the position of Maryland as a border state; all these facts may be considered as exerting a strong influence toward this radical action on the part of the majority members. The report handed in by the four Union members of the Committee on Elective Franchise<sup>133</sup> had contained a test oath as a qualification for office, which was afterwards amended to make it more stringent. A minority report handed in by Messrs. Brown of Queen Anne's and Marbury of Prince George's<sup>134</sup> had contained merely an oath of allegiance to the Constitution of the United States and the Constitution and laws of Maryland. Neither report contained a test oath for voters. Mr. Stirling on August 11 offered the amendments which were finally adopted as section 4, and prescribed the disqualifications arising under the war, and the additional oath for voters.<sup>135</sup> The provision, which was quite long, forever disfranchised and prohibited from holding office all those who had at any time been in armed hostility to the United States or in any manner "in the service of the so-called Confederate States of America," who had voluntarily gone South for that purpose, had given aid, comfort, countenance or support to the enemies of the United States or adhered to them by contributing to them, or "unlawfully sending within the lines of such enemies money or goods or letters or information," or "disloyally held communication with them." In addition there were included under the ban all those who had "advised any person to enter the service of the said enemies, or aided any person so to enter or who [had] by any open word or deed declared [their] adherence to the cause of the enemies of the United States, or [their] desire for the triumph of said enemies over the arms of the United States." These disqualifications could be removed only by service in the military forces of the Union,

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<sup>133</sup> Proc., 431-3.<sup>134</sup> Proc., 449-51.<sup>135</sup> Proc., 463-8.

or by an act of the General Assembly passed by a two-thirds vote of all the members elected to each house, and restoring the offender to his full rights of citizenship. The "Officers of Registration" and "Judges of Election" were "carefully to exclude from voting, or being registered, all persons so as above disqualified." The hands of these officials were strengthened by the additional clause that "the taking of such oath shall not be deemed conclusive evidence of the right of such person to vote," thus leaving to them individually the final judgment in the matter. In order to cover the first election under the Constitution and the subsequent registration for which the Legislature was to provide, the above-given oath was required of all voters and the Judges of Election must state in the returns that this provision had been complied with.<sup>128</sup> Mr. Berry of Prince George's attempted to insert a clause limiting the imposition of the oath to cases where there was a challenge "by a legally qualified voter, resident of said district or ward in which the vote is offered," but it was voted down 12 yeas to 47 nays.<sup>129</sup> A similar fate had befallen the attempt of Mr. Davis of Charles to declare in the first section of the same article that "all persons [should] be considered loyal who [had] not been convicted in some Court of Law of disloyalty."<sup>130</sup>

Mr. Stirling also offered the provision which was adopted, with several amendments, and contained an equally stringent oath of office.<sup>131</sup> It required of "every person elected or appointed" to any office under the Constitution or laws pursuant thereto, that he should not only swear allegiance to the Constitution, Laws, and Government of the United States "as the supreme law of the land, any law or ordinance of this or any state, to the contrary, notwithstanding," and that he had not used any unfair meas-

<sup>128</sup> Mr. Stirling distinctly stated this object, Deb., ii, 1272.

<sup>129</sup> Proc., 466-7. See Nelson, "Baltimore," p. 573.

<sup>130</sup> Proc., 462-3.

<sup>131</sup> Proc., 472-4, 505-8 (Section 7 in Constitution).

ures, of bribery or illegal voting, but in addition that he had "never directly or indirectly by word, act, or deed, given any aid, comfort or encouragement to those in rebellion against the United States or lawful authorities, thereof," but that he had been truly and loyally on the Union side. Further, that he would to the best of his abilities protect and defend the Union and "at all times discountenance and oppose all political combinations having for their object such dissolution or destruction." Mr. Scott of Cecil had offered an amendment to the original report requiring the officer-elect to swear among other extravagant things that he had "uniformly and at all times denounced [those in rebellion] not only as rebels against and traitors to their country, but as enemies of the human race"! However, Mr. Stirling's amendment was the one which superseded this latter.<sup>120</sup> An additional provision offered by Mr. Stirling was adopted, which required all those in office under the preceding Constitution to take the above oath of office within thirty days after the new instrument had gone into effect. The office should be *ipso facto* vacant if the incumbent should fail to fulfill this condition.<sup>121</sup>

As was to be expected, the minority stoutly opposed these oaths or tests, declaring them to be especially directed against the large number of true Union men who opposed the "usurpations" of the National Government.<sup>121</sup> An unsuccessful series of bitter and sarcastic amendments was offered by Mr. Jones of Somerset putting the observance of the "Ten Commandments" in the test oath, and the affirmation that the person had "faithfully supported the Constitution of the United States against all violations of the same whether in the Northern or Southern States, or in any department of the Government of the United States, civil or military."<sup>122</sup> A more serious attempt to

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<sup>120</sup> Proc., 422-4, 505-8.

<sup>121</sup> Deb., ii, 1334.

<sup>122</sup> Proc., 512-3.

<sup>123</sup> Proc., 449-500.

provide that the prescribed oaths be in force only till the end of the war was voted down, 47 to 23.<sup>128</sup>

The debate on all these questions was more bitter than at any other time during the Convention, with perhaps the exception of the consideration of the soldiers' vote and of the mode of submitting the new Constitution to the people.<sup>129</sup> The minority held that the oaths largely tended to continue after the war had ceased the conditions co-existing with it, and would go far to prevent the subsequent reconciliation necessary to the peace and prosperity of a reunited country. They also rightfully objected that it gave far too much power to the Judges of Election, and offered every opportunity for unfairness and abuse.<sup>130</sup>

Another strong point was that it was eminently improper to compel the entire support of the National Government, a requirement especially irritating to many who held that the coercion of the South was in violation of the Constitution of the United States.<sup>131</sup>

The majority held that there was nothing unusual in the oaths when the circumstances in which the state was placed were considered, and that no one could faithfully, zealously, and honestly serve the State of Maryland as an officer, who could not undergo the prescribed tests.<sup>132</sup>

We of this day, while admitting the force of the arguments of both sides in the Convention, must necessarily take a middle course in forming our judgment, and conclude that the majority were right in providing test oaths of some sort as a war measure, but that they made a great mistake in the extent of their requirements and the method of enforcing them.

Other points of interest to be noted in connection with the treatment of the franchise are that it was again in this connection restricted to white male citizens, and that there were unsuccessful attempts to allow ex-convicts to vote

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<sup>128</sup> Proc., 511-2.

<sup>129</sup> Deb., ii, 1266, 1335.

<sup>130</sup> Deb., ii, 1262-89, 1299-1303, 1330-81.

<sup>131</sup> Deb., ii, 1359. <sup>132</sup> Deb., ii, 1358-9.



after a certain period of good behavior, or consequent upon legislative action.<sup>120</sup> The provision which required the General Assembly to provide by law for taking the votes of soldiers in the army of the United States serving in the field<sup>121</sup> will be considered later, as the main opposition centered around this entirely new provision when it was applied to the vote on the ratification of the Constitution.<sup>122</sup>

The new instrument showed a number of changes in regard to state officials, and the positions they occupied. In the Executive Department the old "Gubernatorial Districts," from each of which the Governor was chosen in turn,<sup>123</sup> were abolished, thus doing away with a useless and cumbersome institution. The salary of the chief executive was raised from \$3600 to \$4000.<sup>124</sup> A proposal to give him the veto power was speedily tabled by the Convention, which considered this an unnecessary departure from the custom of the past.<sup>125</sup> As the judiciary and most of the other state officers were to be elected his appointing power was small.

The office of Lieutenant-Governor was created—an entirely new departure for the State of Maryland. The same qualifications and same manner and time of election were prescribed as in the case of the Governor. This new officer was to preside over the Senate with the right of a casting vote in case of a tie, and was also to succeed to the office of the Executive, in case of the "death, resignation, removal from the state, or other disqualification" of the latter. He was to receive no salary but the same compensation as that allowed the Speaker of the House of Delegates during the sessions of the General Assembly.<sup>126</sup> The creation of this office was an idea which originated in the Conven-

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<sup>120</sup> Proc., 474-5.

<sup>121</sup> Art. i, sec. 2.

<sup>122</sup> See pages 88-90.

<sup>123</sup> There were three districts—Eastern Shore, Western Shore, and western part of the state. See Cons. 1850-1, Art. ii, sec. 5.

<sup>124</sup> Article ii, section 22. <sup>125</sup> Deb., ii, 898. <sup>126</sup> Art. ii, sec. 6-10.

tion, and had previously been little discussed in the State, if at all.<sup>126</sup> The minority members of the Committee on the Executive Department had brought in a report against this new office<sup>127</sup> and although Mr. Smith of Carroll and a few others of the majority members joined with the other political faction in opposing the office as unnecessary, the measure passed without much difficulty or delay.<sup>128</sup> Those favoring it brought forth as the reasons for their action the fact that the provision gave an additional popular feature to the Constitution by making the people doubly secure of the choice of their chief executive, and brought the Government of Maryland in line with those of a majority of the states of the Union.<sup>129</sup> A move to abolish the office of Secretary of State and combine its duties with those of the Lieutenant-Governor was quickly defeated.<sup>130</sup>

Another new state office created was that of Attorney-General, which also was to a great extent an idea of the Convention members.<sup>131</sup> This office had existed before 1851, but was abolished by the Constitution of that year.<sup>132</sup> The reason for that action, as given by Judge Chambers,<sup>133</sup> who had been a member of the Convention which framed the instrument, was not from any belief that the office was unnecessary, but purely from personal considerations, having relation to an individual who it was supposed was going to obtain the office. There was now practically no opposition in the Convention to its re-establishment, and it was provided<sup>134</sup> that the Attorney-General be elected by the people for a term of four years, that to be eligible he must have resided and practiced law in the state for at least seven years next preceding his election, and must perform the usual duties required of such an officer. The salary was \$2500 a year. There was no change of any

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<sup>126</sup> Authority of Mr. Joseph M. Cushing.

<sup>127</sup> Proc., 492-3.

<sup>128</sup> Deb., ii, 1317-9.

<sup>129</sup> Authority of Mr. Joseph M. Cushing.

<sup>130</sup> Art. 3, section 32. <sup>131</sup> Deb., iii, 1463.

<sup>132</sup> Proc., 448-9.

<sup>133</sup> Proc., 493.

<sup>134</sup> Art. v, secs. 1-6.

consequence in regard to the provisions for State's Attorneys.<sup>144</sup> In regard to the Treasury Department<sup>145</sup> it is hardly necessary to say more than that the provisions of the old Constitution were closely followed with only a few minor changes in phraseology. As before, the Comptroller was to be elected by popular vote for a term of two years, and at each session of the Legislature the State Treasurer was to be chosen by joint ballot, to hold his office for a like term. The salary of both officers remained at \$2500 a year.

The Commissioner of the Land Office was now to receive the fixed salary of \$2000 a year, and pay into the Treasury all fees received, instead of retaining them as his compensation according to the former provision.<sup>146</sup> There was some question as to the desirability of abolishing this office, but it was finally retained as a necessary part of the administration.<sup>147</sup> The salary of the State Librarian was increased from \$1000 to \$1500, and the Legislature was to pass no law whereby he was to receive additional compensation.<sup>148</sup> This action was intended to give that officer an adequate salary and abolish extra Legislative appropriations for certain duties performed.<sup>149</sup> The "Board of Public Works" was entirely reorganized. The old provision for electing four "Commissioners" from a like number of districts into which the state was divided<sup>150</sup> was abolished, and the board now consisted of the Governor, the Comptroller and the Treasurer, who were to receive no additional compensation for the performance of their duties in this connection. This board superintended the interests of the state in internal improvement.<sup>151</sup>

The other state officials will be mentioned in connection with the more important departments of administration with which they were connected.

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<sup>144</sup> Art. v, secs. 7-11.

<sup>145</sup> Art. vi.

<sup>146</sup> Art. vii, sec. 3.

<sup>147</sup> Deb., ii, 1090-4.

<sup>148</sup> Art. viii, sec. 4.

<sup>149</sup> Deb., ii, 1101-9.

<sup>150</sup> Cons. 1850-1, Art. vii, secs. 1-3.

<sup>151</sup> Art. vii, secs. 1-2.

The article dealing with the Legislative Department (III) showed a number of changes, most of them in the line of improvement. In this connection, the most important question of all was that of basis of representation, concerning which there had been much complaint throughout the state, especially on the part of Baltimore City and the northern and western counties. In 1851 the principle of representation according to population had been adopted for the first time,<sup>183</sup> but with the restriction that Baltimore City should have only four more members than the largest county. At the same time the entire population, white and black, slave and free, was made the basis. The above-mentioned parts of the state justly condemned all this, which gave to the southern, slave-holding counties an unfair measure of power and the practical domination of the state.<sup>184</sup> As can be well imagined, the majority members of the Convention, particularly those from Baltimore City, were determined to change this system entirely. The minority, coming altogether from the more-favored section of the state, naturally fought the move with all their might, particularly as they would be helped in some measure by the county members of the majority, who were evidently unwilling to have the basis placed entirely on population, for the reason that in this case Baltimore City would be given too much power for their liking. Under these circumstances, the compromise was effected according to which the basis of population was applied by an artificial rule, limiting Baltimore City and the larger counties, but with the result of allowing the city a larger representation than heretofore. The entire majority, however, joined together in a shrewd political move and increased the reduction of the political power of the southern

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<sup>183</sup> A constitutional amendment in 1837 had only partially incorporated this principle.

<sup>184</sup> See Nelson, "Baltimore," p. 157, for a quotation on this subject from a speech of Hon. Henry Winter Davis; also see newspapers of 1863-4.

counties consequent upon the above, by making the white population of the state the exclusive basis of representation in the House of Delegates.

Early in the session of the Convention Mr. Clarke offered resolutions to the effect that it was "inexpedient . . . to adopt a system of representation based exclusively upon population," and recommending instead that this principle be applied to the counties, and then four more delegates be given to Baltimore City than would fall to the largest county. A plan of apportionment also submitted by Mr. Clarke divided the county population by seven thousand, giving Baltimore County, the most populous, a representation of eight, and consequently twelve to the city, the entire number of delegates to be eighty. Failing this plan, if the whole state was to be represented according to population, districts were to be substituted in Baltimore City. These resolutions were referred to the Committee on Representation.<sup>154</sup> Mr. Belt submitted the proposition that the entire state be divided into electoral districts, and this was the ground on which the minority took its stand.<sup>155</sup>

Mr. Abbott of Baltimore City on May 27 made the report of the six Union members of the Committee on Representation, which furnished the foundation of the compromise plan that was finally adopted as above stated.<sup>156</sup> The three Democratic members handed in a minority report embodying Mr. Clarke's plan of giving the counties representation according to population, and Baltimore City four more delegates than the largest county.<sup>157</sup> This was voted down by the party vote of 26 yeas to 46 nays.<sup>158</sup>

The minority, as already stated, now skilfully took its stand on the electoral district plan, which would tend to slightly diminish the overwhelming party influence of the larger counties and Baltimore City in particular, by affording opportunity for the minor political party (at this time

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<sup>154</sup> Proc., 26-7, 31-3.

<sup>157</sup> Proc., 122-3.

<sup>155</sup> Proc., 88.

<sup>156</sup> Proc., 120-1.

<sup>158</sup> Proc., 351.

of course the Democratic) to secure the election of representatives from those districts in which it might be strong, whereas it would perhaps be defeated entirely if the vote of the whole county or city were thrown together. They urged as their main argument in favor of this method that every voter throughout the state would thus cast his ballot for one delegate, while under the other plan the citizen in the smaller counties might vote for only one or two delegates, and the citizen in Baltimore City or a larger county for eight or ten, or perhaps more. This second plan was lost,<sup>120</sup> and the minority now turned their attention to lessening the representation of Baltimore City, and increasing that of the smaller counties as much as possible.

As finally adopted,<sup>121</sup> the representation was according to the following plan:<sup>122</sup> Baltimore was divided into three legislative districts, and each one of these districts,<sup>123</sup> as well as each county of the state, was to be represented by one Senator, elected by the people for the term of four years, subject to a classification by which the election of one-half of the entire number should occur every two years. The apportionment of the Delegates was as follows: for every five thousand persons or fractional part over one-half, one Delegate to be chosen until the number for each county and legislative district of Baltimore City should reach five, above that number one delegate for every twenty thousand persons or larger fractional part thereof, and after this, one for every eighty thousand persons or larger fractional part. Until the next census was taken the representation was to be as specifically provided in the Constitution, which gave Baltimore City altogether eighteen delegates,<sup>124</sup> and sixty-two delegates to the counties. A sharp struggle occurred on the representation of

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<sup>120</sup> Proc., 352, 360-1.

<sup>121</sup> Proc., 352, 362, 639-42.

<sup>122</sup> Art. iii, secs. 2-4, 7.

<sup>123</sup> Baltimore had hitherto only one senator and ten delegates. The committee report had provided twenty-one delegates for the city (Proc., 120-1).

<sup>124</sup> See note, preceding page.

Baltimore and Kent counties. The latter county fell only 153 short of the necessary population required for two delegates,<sup>134</sup> and the former claimed an additional delegate for the reason that its population of 46,722 placed it within the arbitrary twenty-thousand rule, so that it had only six delegates, one more than Allegany for instance, which had 19,507 population, less than half of that of Baltimore County. It was finally decided near the close of the Convention to give Kent the extra delegate, but Baltimore County was held down to the letter of the rule adopted.<sup>135</sup>

It is interesting to note that throughout the consideration of this question the members of the majority made comparatively few speeches, and even then made no serious attempt to answer the extensive arguments brought forth by the minority.<sup>136</sup> These latter took the ground that their opponents were attempting to deprive the southern counties of their proper political influence,<sup>137</sup> to give Baltimore City the position of three counties,<sup>138</sup> and that as soon as slavery was abolished even a three-fifths rule held no longer, but the whole population became the joint basis of apportionment.<sup>139</sup> It was all in vain, however, for now they only succeeded in procuring the additional delegate for Kent. The majority were evidently not going to lose this opportunity of settling old scores, and in addition might have urged the old excuse that it was necessary to strengthen the supporters of the National Administration in Maryland by weakening the power of their opponents.

The article on the Legislative Department contained numerous other changes, mostly in the direction of limiting the power of the General Assembly to act in certain cases.<sup>140</sup> Taking the most important in the order in which

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<sup>134</sup> Deb., iii, 1658.

<sup>135</sup> Proc., 639-42; Deb., iii, 1655-76.

<sup>136</sup> Deb., ii, 1032-59, 1060-78.

<sup>137</sup> Deb., ii, 1034.

<sup>138</sup> Deb., ii, 1038.

<sup>139</sup> Deb., ii, 1041.

<sup>140</sup> Might this not have been a result of the struggle over the "Frederick" Legislature of 1861?

they occur, it will first of all be noticed that the old provision prohibiting clergymen from accepting seats in the legislature was omitted, although Judge Chambers strongly protested against this action on conservative grounds.<sup>171</sup>

The regular sessions of the General Assembly had heretofore closed on the 10th of March, now they were unlimited, though special sessions could only continue thirty days. The former pay of \$4 per day was raised to \$5 for all sessions, but no member could receive more than \$400 for the regular session. This was of course a distinct improvement on the old provision.

A number of the restrictions mentioned above were contained in a section (32) which prohibited the Legislature from passing local or special laws in fourteen different cases, of which those relating to assessment and collection of taxes, to interest on money, those providing for the sale of real estate belonging to minors, giving effect to informal or invalid deeds or wills, those granting divorces, and those "establishing, locating or affecting the construction of roads, and the repairing or building of bridges" were the most important. Also the provisions were continued which prohibited the giving of the credit of the state to aid in works of internal improvement, and that unsecured debts were not to be contracted, except on the authority of the General Assembly to meet deficiencies to the extent of \$50,000, or to any amount necessary for the defense of the state.

It was provided that laws were to be passed requiring the stringent oath of allegiance to be taken by the "president, directors, trustees, or agents of corporations created or authorized by the laws of this state, teachers or superintendents of public schools, colleges, or other institutions of learning; attorneys-at-law, jurors, and such other persons as the General Assembly shall from time to time prescribe."<sup>172</sup>

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<sup>171</sup> Deb., ii, 790-6.

<sup>172</sup> Art. iii, sec. 47.



In regard to internal improvements it should be noted that there was a strong sentiment in favor of selling the state's interest in them. The report of the Committee on the Legislative Department had contained a section providing that the General Assembly should take the necessary steps to dispose of the above, and use the proceeds for the payment of the public debt of the state, any surplus to be held as a permanent fund for the support of education.<sup>173</sup> When this section came up for consideration in the Convention, the variety of plans and ideas presented in regard to it, and the utter lack of any definite policy or party lines among the members, show that the subject was largely a new one. It had been raised by several individuals who brought before the committee the argument that arrangements might be made by which the Chesapeake and Ohio Canal, the unproductive state stock in which was the special object of attack, might be leased to the preferred creditors, many of them citizens of Montgomery, Frederick, Washington and Allegany counties, who as citizens were held to have a double interest, both in the usefulness of that particular work, and in its being remunerative to the state.<sup>174</sup>

The question of the sale seemed to come as a surprise to the Convention, and though a large number expressed themselves as favorable to the move, yet so many plans and amendments of various sorts were offered that the subject became involved in a veritable sea of confusion. The state owned large amounts of both productive and unproductive stocks, and the sentiment was entirely divided as to whether certain parts or all of these should be disposed of. The great fear seemed to be, that the Baltimore and Ohio Railroad would gain control of the Chesapeake and Ohio Canal, and use it to discriminate in rates against the western part of the state, and also that the sale would offer a rich field for bribery and political job-

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<sup>173</sup> Proc., 193.

<sup>174</sup> Deb., ii, 815.

bing. The uncertain state of the "money market" in time of war was a potent reason urged against any action in the matter.<sup>178</sup> The whole question was finally referred to a special committee of nine on July 27, with instructions to report two days later.<sup>179</sup> A majority of six of the committee reported in favor of the sale of certain interests according to a given method, and the reference of the subject of the sale of the remainder to a popular vote. A minority of four members of the committee reported against any provision for the sale of public works, urging that at present it was inexpedient, as it would tend to dissatisfy a large part of the people, and as it was doubtful if any plan could command a majority of the votes of the Convention. A number of the members had come to this more conservative view, owing to the lack of any definite plan as yet, though Mr. Thomas of Baltimore City, who came originally from Allegany county; vigorously opposed the move as detrimental to the western part of the state.<sup>180</sup> After much discussion and seemingly endless amendments,<sup>181</sup> provisions were finally adopted<sup>182</sup> which authorized the Governor, Comptroller and State Treasurer conjointly, or any two of them, to exchange the state's interest in the Baltimore and Ohio Railroad "for an equal amount of bonds or registered debt now owing by the state," and also to sell the interests in the other works of internal improvement or banking corporations, but subject to such regulations and conditions as the General Assembly might prescribe. There were two provisos to the above, the first reserving from sale the interest of the state in the Washington Branch of the Baltimore and Ohio Railroad, and the second requiring a ratification by the Legislature of the sale of the interests in the Chesapeake

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<sup>178</sup> Deb., ii, 814-5, 903, 908.

<sup>179</sup> Proc., 346-9.

<sup>180</sup> Deb., ii, 966-70.

<sup>181</sup> Proc., 298-304, 315-6, 321-2, 340-9, 391-5, 398-404; Deb., ii, 814-9, 872-3, 899-913, 962-74, 1110-25, 1145-53.

<sup>182</sup> Yeas 39, nays 25 (Proc., 402-3). See Art. iii, secs. 52-3.

and Ohio Canal, the Chesapeake and Delaware Canal, and the Susquehanna and Tidewater Canal Companies. In addition, the Legislature was to provide, before the Chesapeake and Ohio Canal could be sold, such laws as should be necessary to authorize the counties of Allegany, Washington, Frederick and Montgomery or any one of them "to create a debt by the issue of bonds or otherwise, so as to enable them, or any of them, to become the purchasers of said interest." All party lines were entirely obliterated during the consideration of the above, and the members voted as individuals.

Another section which was incorporated in this same Legislative Article<sup>120</sup> gave the General Assembly "power to accept the cession of any territory contiguous to this state from the states of Virginia and West Virginia, or from the United States, with the consent of Congress, and of the inhabitants of such ceded territory," and further empowered the Legislature to enact the necessary laws to divide such ceded land into counties, and otherwise make it an integral part of the state. It seems that after West Virginia had seceded from Virginia, there was a widespread belief in Maryland that perhaps portions of this new state or even the whole of it might be induced to consolidate with Maryland. Covetous eyes had also been cast on Loudoun County, Virginia, and also on the Eastern Shore of that state. The provision was in fond anticipation of events which never occurred, but was sufficient to call forth vigorous, and, as usual, vain opposition on the part of the minority, who "protested against the enormity which had been committed in the attempted and pretended erection of this State of West Virginia out of the limits of the State of Virginia." The debate was not of much importance however, and the usual party vote soon carried the provision through.<sup>121</sup>

In concluding the discussion of the various provisions

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<sup>120</sup> Section 48.

<sup>121</sup> Proc., 133, 194, 209; Deb., ii, 866-8, 873-6.

incorporated in the article on the Legislative Department, it is interesting to note that during its consideration in the Convention two movements developed which, though unsuccessful, show that certain members were far in advance of the thought of that day in their views on monetary questions. One movement was an attack on state banks led by Mr. Cushing of Baltimore City, one of the most progressive members of the Convention, and the other an effort to abolish the rigid restriction of the usury laws. Of this latter, Mr. Belt of Prince George's was the leading advocate.

Mr. Cushing desired to have the old provision, which provided for the limited liability of stockholders, inspection of banks, etc.,<sup>122</sup> so amended as to read—"The General Assembly shall grant no charter for banking purposes, or renew any banking corporation now in existence." He stated that he desired the question of currency and note issues to be fairly met, and favored the support by Maryland of Secretary of the Treasury Chase's National Bank plan, which provided for much more uniformity in the banking institutions of the country and in their note issues. It should be noticed that this was an anticipation, by at least a year, of the action of the Federal Government which laid the prohibitory tax of ten per cent on the note issues of state banks, and drove so many of the latter to reincorporation under national laws. Mr. Cushing's plan received little support, and was rather treated with indifference, so that gentleman withdrew his motion.<sup>123</sup>

Early in the session, on motion of Mr. Belt, a special committee of five was appointed to consider and report upon interest and usury laws.<sup>124</sup> This committee reported in favor of a provision fixing the legal rate of interest at six per centum per annum, except in cases where a different rate might be agreed upon between contracting par-

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<sup>122</sup> Art. iii, sec. 45 (Cons. of 1850-1).

<sup>123</sup> Deb., ii, 835-45.

<sup>124</sup> Proc., 18.

ties, the rate agreed on or contracted for being recoverable in all cases of private contract.<sup>126</sup>

The rate of interest prescribed in the old Constitution was six per centum,<sup>127</sup> and the effort of Mr. Belt and the more progressive members of the Convention who supported him without regard to party, was to have money treated like any other commodity—subject to the market price. A practical turn was given to the argument by the statement that the New York rate of seven per centum was drawing from Maryland its available capital, and that the provision reported would of course tend to remedy this. Mr. Belt was ably seconded by Mr. Cushing, Mr. Negley and others, party lines being again disregarded, but Judge Chambers, who was usually ultra-conservative, Mr. Sands of Howard, and numerous others opposed the provision with the old arguments of "protection of the laboring man," the necessity of "restraining the appetite of the money-lender," and further reasons of the like kind. Mr. Belt delayed final action for some time in the hope that he might obtain from the people, especially from the business men of Baltimore, petitions strong enough to influence sufficient votes in the Convention to carry his measure through,<sup>128</sup> but it was all to no purpose. He was rewarded by only one petition, that from the Baltimore Corn and Flour Exchange,<sup>129</sup> and the old restriction was reenacted. Although by a further effort he succeeded in having this action reconsidered two days before the Convention adjourned, the conservative sentiment was again too strong for him, and the result was exactly the same as before.<sup>130</sup>

Another progressive change of an entirely different character which was advocated, and which suffered a like

<sup>126</sup> Proc., 520-1.

<sup>127</sup> Cons. 1850-1, Art. iii, sec. 49.

<sup>128</sup> Authority of Mr. Joseph M. Cushing. <sup>129</sup> Deb., iii, 1685.

<sup>130</sup> Proc., 693-700. See also Deb., iii, 1476-81, 1482-1509, 1811-26; Frederick "Examiner," Aug. 31, 1864.

fate, was the strong effort to provide for an appointed judiciary. Mr. Stockbridge was the leading advocate of this plan, and the Judiciary Committee, of which he was the chairman, reported a system in conformity with these ideas.<sup>120</sup> He was supported in this move by the more progressive members of both sides, but the test vote, which was taken on the question after very little debate, showed a vote of 51 to 19 in favor of an elective system,<sup>121</sup> as had been provided in the Constitution of 1850-1. The old arguments of right of choice of the people, and too much power given to the Governor if he was allowed to appoint the judiciary, proved too strong for Mr. Stockbridge and his supporters.<sup>122</sup>

There had been some complaint in the state that the courts did not sufficiently expedite business,<sup>123</sup> and in order to relieve this and provide for speedy justice in all cases, the numbers of courts and Judges were generally increased, and their jurisdiction was more clearly defined. A decided improvement was introduced by raising the salaries of Judges, though not to the extent that the committee report had provided. The term of office was increased from ten to fifteen years. Numerous minor changes were introduced, but they are largely of legal or professional interest, and hence out of the province of this work.<sup>124</sup> It should be mentioned however, that provision was made for all the Judges then in office to serve out the terms for which they had been elected under the old Constitution.

The minor legal offices showed some change, as the Justices of the Peace were now appointed by the Governor, and the Constables by the County Commissioners and by the Mayor and City Council of Baltimore. These officers were formerly elected by the people. Also, the cumbersome system of electing two Sheriffs, one of whom

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<sup>120</sup> Proc., 415-23.

<sup>121</sup> Proc., 514-5.

<sup>122</sup> Deb., iii, 1385-93.

<sup>123</sup> See Frederick "Examiner," July 6, 1864.

<sup>124</sup> See Article iv of the Constitution as adopted.

was to serve only in case of the death or disqualification of the other,<sup>188</sup> was done away with, and the more common sense plan substituted by which only one Sheriff was to be elected, and the Governor by appointment to fill any vacancies.

We now come to an article which was one of the greatest merits of the Constitution. It was entirely new, and provided for a state system of education. For years before this time numerous attempts had been made at the various sessions of the Legislature to inaugurate some sort of a general educational system, but for one reason or another these attempts had always resulted in failure. The sentiment of the members of the Convention was practically a unit in favor of provisions of this character, and they were backed in this by a large majority of the people of the state. Mr. Cushing of Baltimore City, chairman of the Committee on Education, submitted the unanimous report of that committee,<sup>189</sup> which was finally adopted with changes mostly of a minor character. In its final form it provided as follows:<sup>190</sup> within thirty days after the ratification of the Constitution by the people, the Governor was to appoint, subject to the confirmation of the Senate at its first session thereafter, a State Superintendent of Public Instruction, the term of office to be four years, and the salary \$2500 a year, with certain sums for traveling and incidental expenses which were to be fixed by the General Assembly.

This officer was to report to the General Assembly within thirty days after the commencement of its first session under the new Constitution, an uniform system of free Public Schools. He was also to perform such other duties pertaining to his office as should from time to time be prescribed by law. The Governor of the State, the Lieutenant-Governor, the Speaker of the House of Dele-

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<sup>188</sup> Constitution of 1850-1, Art. iv, sec. 20.

<sup>189</sup> Proc., 372-3.

<sup>190</sup> Art. viii.

gates, and the Superintendent of Public Instruction, were to form a State Board of Education, the duties of which were to be prescribed by the General Assembly. There were to be School Commissioners in each county to be appointed by the State Board for a term of four years, to the number deemed necessary by the State Superintendent. The General Assembly at its first session under the new Constitution, was to provide a uniform system of schools, by which a free school was to be kept open in each school district for at least six months in each year. In case it failed to do this, the system reported by the State Superintendent was to become law, subject to the provisions of the Constitution and to future alteration by the General Assembly. At each regular session of the Legislature, an annual tax of ten cents on the hundred dollars was to be levied throughout the state, the proceeds of which were to be distributed among the counties and the city of Baltimore in proportion to their respective population between the ages of five and twenty years. No additional local taxes were to be levied without the consent of the people affected. Further, there was to be an additional annual tax of five cents on the hundred dollars, the proceeds of which were to be invested until a permanent School Fund of six million dollars was formed, this Fund to remain inviolate, and the annual interest of it disbursed for educational purposes only.<sup>108</sup> As soon as this Fund was formed, the ten cent tax might be discontinued in whole or in part.

The Committee on Education had in mind two men for the position of State Superintendent of Public Instruction—Libertus Van Bokkelen of Baltimore County and William H. Farquhar of Montgomery County, and it was privately agreed with Governor Bradford that he was to appoint either one of these men. The School Fund idea

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<sup>108</sup> For school funds prior to 1865 see report of House Committee, House Journal, 1864, pp. 92-3.



was taken from the school law of the state of Massachusetts, which had a sinking fund, and the remainder of the report was elaborated after a consideration of all the various state school laws.<sup>199</sup> The report was finally adopted without much difficulty, although there was much discussion of the amount of tax to be levied, and the amount of salary of the State Superintendent. Several members also questioned the legality of the provision providing that the system reported to the Legislature should go into effect in case of the failure of that body to act in the matter, but Mr. Cushing and M. Stirling answered this by affirming the sovereign power to provide what it pleased, which was given to the Convention by the people.<sup>200</sup> Several of the minority members attempted, in a most narrow minded spirit, to prohibit the application of any part of the School Fund toward educating the free negro population, but were overwhelmingly defeated.<sup>201</sup>

As regards the organic law embodied in the Constitution, the only important facts which remain to be noted are first, that it was provided that the Legislature might under certain conditions organize new counties, and second, townships were substituted for election districts as the smallest unit of local government, their powers to be prescribed by the Legislature.<sup>202</sup> Mr. Stockbridge seems to have been largely responsible for this change, his desire being to introduce into Maryland, if possible, the New England system of "Town Meetings."<sup>203</sup> Third and last, three methods of amending the Constitution were provided,<sup>204</sup> that is to say—amendments might be submitted to the people after three-fifths of both houses of the General Assembly had passed them; a convention might be called by a two-thirds vote of each house if the people approved it at the polls; and finally, in the year 1882 and in

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<sup>199</sup> Authority of Mr. Cushing. Mr. Van Bokkelen was appointed on November 12, 1864.

<sup>200</sup> Deb., ii, 1201-36, 1241-50.

<sup>201</sup> Art. x.

<sup>202</sup> Proc., 33; Deb., i, 65.

<sup>203</sup> Proc., 453-6.

<sup>204</sup> Art. xi.

every twentieth year thereafter, the question of calling a Convention was to be submitted to the people. Thus we see that the slow conservative methods provided in the old Constitution were done away with, and the final right of the people to change their mode of government whenever it pleased them so to do, was fully recognized.

It should be said, to sum up at this point, that as far as the organic law was concerned, the new Constitution was a decided advance toward modern methods and systems of government, and showed distinct results of the evident wish on the part of the Convention, to have the Constitution of Maryland conform, as far as possible, to the best features embodied in the Constitutions of the other states of the Union.<sup>200</sup>

We now come to a most unpopular feature of the Constitution, which contributed largely to the intense opposition that was aroused against it, and which caused it to be ratified only by a very narrow majority. This was, the method and regulations under which it was to be submitted to the people for their ratification.

As prescribed by the new Constitution,<sup>201</sup> the Governor within five days after the adjournment of the Convention was to issue a proclamation, calling for an election to be held in the city of Baltimore on October 12, 1864, and in the counties of the state on October 12th and 13th. At this election the vote was to be by ballot, and the question to be decided was the ratification or rejection of the Constitution. But it was further provided, that the test oath prescribed in the Constitution for all future elections after the Constitution should be adopted, was to be required of all voters in the election on the ratification of that instrument itself. Again, we have seen that the article on the Elective Franchise required<sup>202</sup> the General Assembly to "provide by law for taking the votes of soldiers in the army of the United States serving in the field." In order

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<sup>200</sup> See Deb., i, 360, 394-5; ii, 1034-5, 1056, 1267, 1317-8, etc.

<sup>201</sup> Art. xii, secs. 8-10.

<sup>202</sup> Art. i, sec. 2. See page 71.

not to lose this vote in the ratification of the Constitution and in the regular national and state elections of November, 1864, special provisions were inserted<sup>\*\*\*</sup> prescribing rules and regulations for the soldiers' vote, which were to remain in force till the Legislature should provide by law, as required above, some other mode of taking the same. All returns of the vote were to be made to the Governor, who was made sole judge of their correctness, and whether or not they were cast according to the provisions of the new Constitution.

Naturally the minority hotly objected to these provisions, being opposed to this method of virtually putting the Constitution into operation before it was adopted by thus prescribing the mode of voting upon itself. The majority answered that the people in their sovereign capacity had by the election of the previous April made the Convention Bill the supreme law of the land, and that in this matter the Convention would be acting according to the provision of that instrument that the new Constitution "should be submitted to the legal and qualified voters of the State, for their adoption or rejection, at such time, in such manner, and *subject to such rules and regulations*" as the Convention might prescribe. The majority further claimed that the test oath only required the same qualifications as those prescribed by the Convention Bill in the clause following the above, which provided that the "provisions hereinbefore contained for the qualification of voters," etc., should be "applicable to the election to be held under this section." The minority answered that the "rules and regulations" the Convention might prescribe could only be those under which the *previously* legal and qualified voters were to vote. They also asked, why there was any need of submitting the Constitution to the people at all, if the Convention had such absolute power under the Convention Bill. They held, further, that the objectionable provisions deprived certain citizens of their right to

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<sup>\*\*\*</sup> Art. xii, secs. 11-16.

vote, and introduced a perfectly new class of voters hitherto unknown to the laws. The majority answer to this last was that those citizens barred from voting had already been practically disfranchised by laws of the National Government, and by decisions of the various courts, and that the soldiers were not a new class of voters, but merely citizens exercising their right of franchise under new conditions. The entire debate was to a great extent along these lines, and was sustained with exceptional brilliancy by the minority members, Mr. Miller of Anne Arundel in particular making a speech which showed great power of logical thought and analytical reasoning. As usual, the result was foreordained, and the provisions passed by the usual party vote.<sup>200</sup> An attempt of the minority to insert a provision providing for new elections in those districts in which there might be military interference was promptly voted down.<sup>201</sup>

From the entire absence at the time of the April election, as far as we can see, of any such extreme views as to the proper construction of the Convention Bill, it is safe to judge that the people of the state had no idea of the extent to which these measures would finally be carried. The majority members of the Convention, however, with rare acuteness saw their opportunity, and were quick to avail themselves of it. Their action, to say the least, was clearly revolutionary, and its justification or condemnation at the present day depends upon individual ideas as to the legitimacy of such measures in time of war, and whether, as seen in the final results, the end justified the means. It only remains to add at this point, that the final draft of the new Constitution was adopted by the Convention on September 6, by the party vote of 53 yeas to 26 nays, 17 members being absent and not voting.<sup>202</sup> After the usual closing remarks by the President, the Convention adjourned.

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<sup>200</sup> For above see Proc., 602-4, 611-3, 670-81; Deb., iii, 1708-19, 1724-56, 1758-71.

<sup>201</sup> Proc., 672-3.

<sup>202</sup> Proc., 770-1.

### III.

In accordance with the eighth section of the twelfth article of the new Constitution, Governor Bradford on September 9, 1864, issued a proclamation calling an election on October 12 and 13 for the purpose of ascertaining the sense of the people in regard to the adoption or rejection of the document. Copies of the Constitution were immediately distributed throughout the state, and a fierce political campaign was entered upon in regard to it. The radical Union men very generally approved of the work of the Convention, but many of the more conservative citizens, including some of those who had hitherto supported the Unconditional Union party, came out publicly in open opposition and used their influence to prevent the adoption of the Constitution. Hon. Reverdy Johnson is perhaps the most striking instance of this latter class. He strongly condemned the requirement of the test oath in the vote on the Constitution, and declared that the Convention in requiring it exceeded its powers by thus acting in a legislative capacity. The Democrats of the state received the Constitution with a storm of indignation, and at once entered vigorously upon an attempt to defeat it in the coming election. This movement was doubtless precipitated by the action of the thirty-five minority members of the Convention, who immediately after the adjournment of that body, and before they had returned to their homes, drew up and published<sup>1</sup> a unanimous protest, addressed "To the Voters of Maryland," in which they denounced the Convention and the new Constitution in the strongest terms. After arguing that the period of a civil war was not the time in which to make any or-

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<sup>1</sup> See "Sun," Sept. 10, 1864.

ganic changes in the Constitution or system of government, and urging the "violent partisan measures" of the majority members as proof of this, they proceeded to specifically condemn numerous provisions of the Constitution, in particular those providing for emancipation, for paramount allegiance to the United States Government, and also the various test oaths, the increase in the legislative representation of Baltimore City, the soldiers' vote, and the manner of submitting the document to the vote of the people. They further said—"Not only is this most wanton violation of your rights aggravated by a contemptuous refusal to allow the least shadow of compensation, but every possible means have been used to extend and perpetuate the injury. The authors of these outrages, apparently sensible that at some future day, a returning sense of justice might succeed the mad fanaticism of the hour, and reverse the iniquitous decrees they had pronounced, have actually assumed the prerogative of judging for all time to come, for the future generations of the people, and the future Legislatures of the state. The fiat has gone forth that no future Legislature shall have power to make compensation. The finances of the state may be ample, the people of the state may desire to repair, to some extent at least, this enormous injury, the Legislature may unanimously respond to this sentiment, but no, the lunatics of 1864 have manacled their hands, they have no constitutional power to do justice. Is the equal to such enormity to be found in the history of any civilized region of the world? We fearlessly answer, no! Other people have manumitted negro slaves. Most of the states north of us have manumitted negro slaves. Did any one of these do this thing as the Convention has done it? Most certainly not."

They closed by characterizing the Constitution as a "wholesale robbery and destruction perpetrated by those whose cardinal duty was to provide for the security of the persons, the protection of the property and the preserva-

tion of the inalienable rights of all the citizens of the state."

Certain citizens of Cecil County presented a memorial to Governor Bradford objecting to the test oath and appealing to him to instruct the Judges of Election to disregard it, and also to disregard it himself by announcing that he would not count the votes of any county in which the oath had been administered to voters. Governor Bradford, on September 21, 1864, wrote a letter to Mr. D. R. Magruder, the chairman of the committee which presented the above petition, and declined to take such action as beyond his jurisdiction, maintaining that his duties were merely ministerial. He also defended the action of the Convention on the ground that the body had plenary powers, and cited the Convention of 1850-1 as a precedent.

Mr. George Vickers, a prominent citizen of Chestertown, wrote several letters to the Governor advocating the same line of action on his part, and in reply Governor Bradford again took a like stand as to limitation of his powers.<sup>2</sup>

The Democrats, who were now becoming better organized throughout Maryland, in their State Convention which met in Baltimore on September 29, 1864, by a unanimous vote passed resolutions offered by Mr. Clarke of Prince George's in which the new Constitution was condemned, and its defeat at the polls was urged.<sup>3</sup> Many political meetings were held throughout the state by both parties, and the various newspapers contained numerous articles for and against the Constitution, many of them contributed by the foremost men of the state. On the other hand, the following from the Centreville (Queen Anne's County) *Observer*<sup>4</sup> may be taken as an instance of the atti-

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<sup>2</sup> This correspondence was made public during the first week of October. See "American," October 5, 1864.

<sup>3</sup> "Sun" and "American" of September 30, 1864.

<sup>4</sup> Quoted in "American," October 6, 1864.

tude of the more extreme pro-slavery Democrats. In opposing the Constitution, this paper said—"Would to God we could picture sufficiently plain the importance of the issue now pending in this state. We . . . leave the reader to decide for himself whether he will perpetually rob his neighbour of his happiness, or whether he will vote against the inhuman, illegal and unjust instrument, and thereby declare himself a friend to the oppressed. . . . Should this infamous instrument be adopted, a perpetual line of demarcation will undoubtedly be drawn both in political, social and business life. No man who entertains any regard for his liberty, will, after the adoption of this Constitution, aid in the support of those who vote for it, and for his oppression."

But the Union party was none the less active in its support of the new Constitution, and the state was vigorously canvassed by Montgomery Blair, Thomas Swann, Henry Winter Davis, William T. Purnell, Archibald Stirling, Jr., Henry Stockbridge, John V. L. Findlay, and other prominent men of that party.

The arguments advanced by both sides in this campaign were largely a repetition of those brought forward by the Union and Democratic members of the Convention in their discussion of the provisions in regard to submitting the Constitution to the people.<sup>1</sup>

Throughout the entire movement leading to the Constitution, President Lincoln had been a close and interested observer, and had given it his constant personal encouragement.<sup>2</sup> Being requested to aid in this final contest, on October 10 he wrote a letter to Henry W. Hoffman,<sup>3</sup> which was read that evening at a Union mass-meeting in Baltimore. In this letter he stated that he would be "gratified exceedingly if the good people of the state [would], by their votes, ratify the new Constitution."

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<sup>1</sup> See pages 89-90.

<sup>2</sup> Nicolay and Hay, "Life of Lincoln," viii, 465. <sup>3</sup> *Ibid.*, p, 467.



The election took place as ordered, on October 12-13. There seems to have been little or no disorder or military interference at the polls, although it was charged that in some districts gross frauds were perpetrated.<sup>\*</sup> These could hardly have been very extensive on either side, as recourse would undoubtedly have been had to the courts in the same manner as was done in the case of the soldiers' vote. The result of the regular state vote showed that the Constitution had been defeated by an adverse majority of 1995.<sup>\*</sup> Of course everything now depended on the result of the soldiers' vote, the returns of which were slowly coming in. The opponents of the Constitution now attempted to throw out this latter vote, and thus insure the final defeat of the document. On October 24, 1864, an application was made to the Superior Court of Baltimore City (Judge Robert N. Martin) on behalf of Samuel G. Miles for a mandamus directed to Governor Bradford, commanding him to exclude all votes cast at any place outside of the state of Maryland from the count upon the question of the adoption of the Constitution. The petitioner stated that he was a qualified voter of Maryland according to the existing Constitution, but had been unlawfully excluded from voting by the Judges of Election because he refused to take the oath illegally prescribed according to the new Constitution. He further averred that the soldiers had not been subjected to the oath according to the requirements of the new Constitution, and hence their votes should not be counted if the above action of the Judges of Election was sustained. Also by this same document the petitioner stated that he would be unlawfully deprived of his property in slaves without any compensation therefor. The court dismissed the petition on the

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<sup>\*</sup> "Sun," Oct. 13; Frederick "Examiner," Oct. 19; Denton "Journal" (quoted in "Sun" of Oct. 24); "American," Oct. 29. See also Scharf, "History of Maryland," iii, 596.

<sup>\*</sup> See appendix for detailed vote.

same day, on the ground that no sufficient reason was given for its interposition. From this decision an appeal was at once taken to the Court of Appeals. Prior to this, the same petition had been presented to the Circuit Court of Anne Arundel county (Judge William H. Tuck), had been likewise dismissed and an appeal taken. Further, pending these proceedings still another petition, in behalf of E. F. Chambers and others, was presented to the Circuit Court of Baltimore County (Judge John H. Price) and also to the same Anne Arundel Court, praying for an injunction to restrain the Governor from counting the soldiers' vote. It was dismissed by both courts and likewise appealed.

This made four appeals, and hearing on them was begun in the Court of Appeals on October 27, 1864. After disposing of some technicalities as to the eligibility of certain Judges to sit in the trial of these cases on account of their owning slaves, the case was argued by I. Nevitt Steele, William Schley<sup>19</sup> and T. S. Alexander on behalf of the appellants, and by Henry Stockbridge and Henry Winter Davis for the other side. On October 29, 1864, the court, through Hon. Richard J. Bowie, the Chief Justice, gave its decision unanimously sustaining Judge Martin in his order dismissing the first case.<sup>20</sup>

While these proceedings were in progress, application was made to Governor Bradford for permission to canvass the returns of the soldiers' vote made to him, of which he was sole judge, and to show cause why certain of these votes should be rejected and not counted. The Governor consented, and the votes and returns were canvassed in detail, William Schley arguing the question against admitting them, and Archibald Stirling, Jr., and Alexander

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<sup>19</sup> Not the member of the Convention. The latter was Frederick Schley, of Frederick county.

<sup>20</sup> Deb., iii, 1915-9; 22 Md. Reports, 170, *Miles vs. Bradford*. Also see contemporary newspapers.

Randall in their favor. Governor Bradford gave his decision on the numerous questions raised as to their legality, in a lengthy opinion, dated October 28, 1864, and published simultaneously with his proclamation declaring the final result of the total vote on the Constitution. The objections raised by Mr. Schley were mainly on the ground of technicalities, as to requiring the oath of the soldiers who voted, as to the paper on which the ballots were printed, as to counting the votes of certain companies not attached to any regiment, etc.

Out of the total of 3186 votes cast by the soldiers, 285 votes "for," and 5 "against" the Constitution were rejected, and 2633 votes "for" and 263 "against" it were accepted. Adding these latter numbers to the vote of the state, it made a total of 30,174 for the Constitution, and 29,799 against it, leaving the small majority of 375 in its favor, an exceedingly close result in a total vote of nearly 60,000. On October 29, 1864, Governor Bradford issued his proclamation declaring the new Constitution adopted, and causing it to go into effect on November 1, 1864.

It should be observed that the overwhelming preponderance of the favorable vote on the part of the soldiers does not necessarily presuppose fraud or unfairness on the part of either the civil or military authorities. Men thrown together in the camp, or standing side by side on the field of battle would naturally be largely of one mind on political matters. This was seen in the case of the votes of the soldiers of various other states at this period. Also, men who were offering their lives in defense of their principles would not be apt, from motives of legal expediency, to hesitate in regard to measures considered as calculated to advance their cause.<sup>13</sup>

We thus come to the end of the movement which

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<sup>13</sup> The War Department issued at Washington on Oct. 1, 1864, "General Order, No. 263," intended to insure, as far as possible, freedom and fairness in the vote of the soldiers of the various states.

occupied the thought of the people of the state during nearly two years preceding the close of the war. It was largely the result of a long-existent feeling of the need of reform in the social and political life of Maryland, and although precipitated and somewhat changed in character by the influence of the Civil War, would undoubtedly have been successful at some later day. In this latter case it would likely have been less extreme, yet perhaps more thorough, in its results, and hardly would have suffered the effects of the inevitable reaction which in the year 1867 not only abrogated the objectionable features of the Constitution of 1864, but rejected some of its greatest merits as well. But the fact that these merits and defects once existed in the organic law and government of the state, will not be forgotten by the more thoughtful people of Maryland, but will serve as a valuable experience to guide them in many hitherto untried paths of reform. Furthermore, if the justification of a higher national necessity is denied the Union men of 1863-4, their courage shown in the abolition of slavery in the state of Maryland deserves the thanks and appreciation of their posterity.

## APPENDIX

Vote on the Constitution, October 12-13, 1864:

	For	Against
Allegany county .....	1,839	964
Anne Arundel county .....	281	1,360
Baltimore city .....	9,779	2,053
Baltimore county .....	2,001	1,869
Carroll county .....	1,587	1,690
Caroline county .....	471	423
Calvert county .....	57	634
Cecil county .....	1,611	1,611
Charles county .....	13	978
Dorchester county .....	449	1,486
Frederick county .....	2,908	1,916
Harford county .....	1,083	1,671
Howard county .....	462	583
Kent county .....	289	1,246
Montgomery county .....	422	1,367
Prince George's county .....	149	1,293
Queen Anne's county .....	220	1,577
Somerset county .....	464	2,066
St. Mary's county .....	99	1,078
Talbot county .....	430	1,020
Washington county .....	2,441	985
Worcester county .....	486	1,666
	<hr/>	<hr/>
	27,541	29,536
Soldiers' vote .....	2,633	263
	<hr/>	<hr/>
	30,174	29,799
	<hr/>	<hr/>
Majority .....	375	



LIFE OF COMMISSARY JAMES BLAIR  
FOUNDER OF  
WILLIAM AND MARY COLLEGE





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History is past Politics and Politics are present History.—*Freeman*

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FOUNDER OF  
WILLIAM AND MARY COLLEGE

By DANIEL ESTEN MOTLEY

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## PREFACE

The writer is greatly indebted to President Lyon G. Tyler, for the use of old college papers and letters of the presidents and professors. The numerous papers and letters of President Blair and Professor Inglis, were placed at my disposal and have been of great service in determining the origin of the college, and the construction of the building. Some of these have been printed from time to time in the William and Mary College Quarterly, but are for the most part unpublished.



# LIFE OF COMMISSARY JAMES BLAIR

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## CHAPTER I.

### BLAIR'S RELIGIOUS WORK.

Of the early life of James Blair, very little is known. He was born in Scotland in the year 1656, and clearly showed his origin by his characteristic, hard Scotch nature, strength of moral character and his indomitable courage. He received his early education in Edinburgh and graduated at Edinburgh University with the degree of Master of Arts in 1673. Soon after his graduation he was beneficed in the Episcopal Church in Scotland, and for several years was rector of Cranston parish in the diocese of Edinburgh.<sup>1</sup> He served his church with such "diligence, care and gravity" that he won the admiration of the Bishop of the Edinburgh diocese and when he left Scotland received from him a recommendation of the highest order.<sup>2</sup> Young Blair went to England in the latter part of the reign of Charles the Second. There he met Dr. Compton, the Bishop of London, and "the energy and zeal of Blair" soon attracted that prelate's further attention.<sup>3</sup>

The Bishop of London seeing in Blair a power for good, spoke to him of the need of ministers in the American colonies and prevailed upon him to go to Virginia as a missionary. The religious condition of the colony, and especially the odium into which the clergy had fallen, were

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<sup>1</sup> Perry's Historical Collection, Virginia, p. 247.

<sup>2</sup> Ibid.

<sup>3</sup> J. S. M. Anderson's History of the Colonial Church, Vol. ii, p. 384.

not at all enticing to the better ministers of England. It was hard to get any of them to go there.<sup>4</sup> Again the livings of the churches in Virginia were managed in such a precarious way that it was not certain that a minister could get a necessary support by his profession. Anderson, the English historian of the Colonial Church, in speaking of Blair, says: "Nothing can be imagined more discouraging than the field of duty which there awaited him."<sup>5</sup>

Notwithstanding these hindrances, which we to-day are too apt to underestimate, Dr. Blair decided to venture, and in 1685 sailed for Virginia. He immediately went to Henrico City, which both in importance and interest stood next to Jamestown. Excepting the efforts made at the Falls of the James River, at Nansemond and Hampton, Henrico was next to Jamestown the oldest settlement in Virginia, having been planted in 1611 by Sir Thomas Dale and Rev. William Whitaker. Dr. Blair soon after his arrival was accepted as minister of Henrico parish and inducted into it.<sup>6</sup> He preached there for nine years until he moved to Jamestown, in 1694, in order to be nearer Middle Plantation, at which place he was establishing a college. He became minister of the Jamestown Church in 1694 and remained pastor there for sixteen years. He became attached to the people there, and nothing but duty calling him elsewhere caused him to leave.<sup>7</sup> Some time during the early part of his ministry Blair was married.<sup>8</sup> His wife was the daughter of Benjamin Harrison, of "Wakefield," Surry County.<sup>9</sup>

In 1710, Rev. Solomon Whately, the rector of Bruton Church, Williamsburg, having died, the vestrymen called

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<sup>4</sup> Perry's Historical Collection, Virginia, p. 335.

<sup>5</sup> Anderson's History of the Colonial Church, Vol. ii, p. 384.

<sup>6</sup> Perry's Historical Collection, Virginia, p. 42.

<sup>7</sup> Church Review, Vol. viii, p. 606, or the vestry book of Bruton Church.

<sup>8</sup> If the date is known, it has not been possible to ascertain it.

<sup>9</sup> Virginia Magazine of History, Vol. iv, p. 161.



a meeting for the purpose of employing a minister. After a brief consideration of a few prominent candidates, "by the Majority of Votes, the Rev. James Blair was elected minister thereof."<sup>10</sup> The church wardens informed Dr. Blair that he had been called to the Bruton Church. Here is inserted a part of Dr. Blair's letter, addressed to the vestry of Bruton Church before his election. It may briefly tell the cause of his leaving Jamestown:

"December 4th, 1710.

"Gentlemen:

. . . . . It is true, I have so many obligations to ye Parish of James City, that nothing but the urgent Necessity of health, often impaired by such long Winter Journeys, and a fear that as age and infirmities increase, I shall not be able to attend that Service (being at such a distance) so punctually as I have hitherto done, could have induced me to entertain anything as of leaving them."<sup>11</sup>

Dr. Blair entered at once upon his duties in connection with the church at Williamsburg and continued his ministry there as long as he lived. Williamsburg had been known in former years as Middle Plantation from the fact of its lying midway between James and York Rivers. But, in 1700, when Lieutenant-Governor Nicholson moved the seat of government from Jamestown because of the damage to that town by fire and the unhealthiness of the place, he planned a large town at Middle Plantation. The new capital was named Williamsburg in honor of King William III.<sup>12</sup> By the time Dr. Blair became rector there, in 1710, the town, with its beautiful location and broad and straight streets, with William and Mary College and the capitol, was a centre of attraction to all parts of Virginia. Many of its inhabitants were courtly

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<sup>10</sup> Church Review, Vol. viii, pp. 591, 592.

<sup>11</sup> Church Review, Vol. viii, p. 606, or the vestry book of Bruton Church.

<sup>12</sup> Virginia State Papers, Vol. i, p. 73.

and refined, and during college commencements and the sessions of the Burgesses the place is said to have presented on a small scale the scene of a court in the mother country. At the time Dr. Blair was called to Bruton Church its parish was ten miles square and its members included the most distinguished men of the colony." Bruton or Middle Plantation Parish was three quarters of a century old at that time. It is mentioned in the acts of the "Grand Assembly" as far back as February 17, 1644, but it was established several years before then," for the York Records mention it at an earlier time. It once consisted of two parishes, the Harrop and the Middle Plantation. In April, 1658, Harrop and Middle Plantation parishes were incorporated into one, which was to be known as the parish of Middletown." Marston parish was joined to that of Middletown in 1674, and the united parishes took the name "Bruton Parish." The derivation of the name Bruton is not known, but it is thought by John C. McCabe and Dr. Lyon G. Tyler to have been called Bruton in honor of Thomas Ludwell, or of Sir William Berkeley, the Governor, who were from Bruton, Somerset County, England.

When Dr. Blair took charge of the work at Bruton Church he found its communicants, among whom was Governor Spotswood, making preparations for erecting a new building. He immediately entered heartily into the project, and presented to the vestrymen the Governor's plan, encouraging the undertaking with means as well as with words. The new church building was to be seventy-five feet long, twenty-eight feet wide, and to have two wings twenty-two feet in width, and walls twenty-three feet high constructed of brick. Governor Spotswood agreed

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<sup>29</sup> Perry's Historical Collection, Virginia, p. 299.

<sup>30</sup> Hening's Statutes, Vol. i, p. 317.

<sup>31</sup> Hening's Statutes, Vol. i, p. 498.

<sup>32</sup> York Records, William and Mary College Quarterly, Vol. iii, p. 170.

to put up twenty-two feet of its length at his own expense. The General Assembly contributed means for the two wings. By the end of 1715 the spacious building was practically finished. The ground plan formed a Greek cross, and the same church, except for some changes in the size and interior adornments, still stands at old Williamsburg.

Dr. Blair preached at his church every Sunday morning. On Sunday evenings lectures were given. Rev. Hugh Jones, M. A., lectured there some years. Although Dr. Blair had three other important offices to fill, besides that of minister, yet he was never neglectful of his church. Whenever he took a trip to England, as he frequently did, he was particular to see that his church was supplied with preaching during his absence, and often refused salary that it might go toward supplying his pulpit. "He was much beloved and respected and especially in his own parish and among his nearest neighbors who knew him best."<sup>77</sup> For thirty years he continued to serve Bruton Church.

Dr. Blair's preaching was plain, strong and especially practical for that time. His audiences were composed of the élite of the colony. His sermons were always forcible denunciations of all forms of sin.<sup>78</sup> In his work as minister he wrote four volumes of sermons on "Our Savior's Divine Sermons on the Mount." There are one hundred and seventeen sermons in the volumes and each volume contains about five hundred pages. They were first published in England in 1722. A new edition was published in 1740.<sup>79</sup> They are interesting in that they are among the very first contributions to American religious literature. Four volumes are in the library of William and Mary College, to which they were presented in "1860 by Bishop Meade." Dr. Blair's purpose in writing these sermons was to arouse the people to "a more diligent consideration

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<sup>77</sup> Perry's Historical Collection, Virginia, p. 150.

<sup>78</sup> Blair's Sermons.

<sup>79</sup> Ibid.

and practice of Christian Morals," and bring about a "Revival of the true Spirit of Christianity."<sup>m</sup> The character of the sermons is well described in the words of Dr. Daniel Waterland, who wrote the preface of the new edition: "As to the Subject here made Choice of it is the highest and the noblest that could be, viz. our Lord's *Divine* Sermons on the Mount: And as it is here explained with *good Judgment*, so it appears likewise to be pressed with *due Force*; in a clear and easy, but masculine Style, equally fitted to the Capacities of *common* Christians, and to the improved Understandings of the Knowing and Judicious."<sup>n</sup> Of them, Bishop Meade says: "As an accurate commentary on that most blessed portion of the Scripture, I should think it can never have been surpassed."<sup>o</sup>

For many years previous to Blair's arrival in Virginia the clergy and others had complained of the need of a bishop of Virginia, who might discipline the ministers and raise the religious condition to a higher and more respectable plane.<sup>p</sup> They thought the sole remedy lay in the appointment of a bishop. It was hard to find a man equal to that office, but Dr. Blair, "by his regular conversation, exemplary Conduct, and unwearied Labors in the Work of the Ministry" . . . . "did good Service to Religion, and gained to himself a good Report amongst all: So that . . . . Bishop Compton, being well apprized of his true and great Worth, made choice of him, about the year 1689 as his *Commissary* for Virginia."<sup>q</sup> He was the first to hold that office in the colony of Virginia. Dr. Temple, previous to this time, had done the work of a Commissary in some respects, but had never been appointed as such. The commissaryship was "a very weighty and creditable post, the high-

<sup>m</sup> Blair's Sermons, Vol. i, Preface, p. 22.

<sup>n</sup> Blair's Sermons, Vol. i, Preface, p. 7.

<sup>o</sup> Meade's Old Churches and Families, Vol. i, p. 155.

<sup>p</sup> Anderson's History of the Colonial Church, Vol. ii, pp. 356, 358.

<sup>q</sup> Blair's Sermons, Vol. i, Preface, p. 2.

est office in the Church" in Virginia.<sup>2</sup> The duty of the Commissary consisted in visiting the parishes, correcting the lives of the clergy, and keeping them orderly.<sup>3</sup> Dr. Blair, as Commissary, called conventions of the preachers, presided at trials, and pronounced sentences when any one of the preachers was proved guilty of crime or misconduct. With respect to the clergy he exercised about all the functions of a bishop except ordination and the probate of wills. No meeting of the clergy treating of ecclesiastical matters was to be held without the Commissary. He never attempted to set up a court for the laity. It must be here remarked that the Governor of Virginia was the king's ordinary, by virtue of which office it was his duty to induct ministers into parishes when they should be presented by the vestrymen in the name of the parishioners.<sup>4</sup> He had the power of both presentation and induction, if the vestrymen did not present a minister to him in the space of six months from the time the church became vacant. It was the duty of the Governor to suspend or silence any man he should find preaching without having been ordained by some bishop of England or if he should be leading a scandalous life.<sup>5</sup>

Twelve men in each parish, known as vestrymen, were elected by the parishioners at its beginning and any vacancies caused by death or otherwise were filled by the choice of the vestry. According to the law it was the duty of the vestrymen to proportion "the levies and assessments for building and repairing the churches and chapels, provisions for the poor, maintenance of the minister, and such other necessary duties for the more orderly management of all parochial affairs." They employed the minister and ac-

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<sup>2</sup> Blair's Sermons, Vol. i, Preface p. 2.

<sup>3</sup> Perry's Historical Collection, Virginia, p. 250. Anderson's History of the Colonial Church, Vol. ii, p. 383.

<sup>4</sup> Perry's Historical Collection, Virginia, pp. 243, 244.

<sup>5</sup> Perry's Historical Collection, Virginia. Laws of Virginia, p. 3. Henning's Statutes, Vol. iii, p. 44. Perry, p. 242.

<sup>6</sup> Henning's Statutes, Vol. ii, p. 44. Perry, p. 242.

according to the rules of the church should have presented him for induction, but the fact that they rarely did this was the cause of much disturbance. Out of their number two church wardens were chosen yearly, whose duties may be summed up in a general way under three heads: First, The church wardens acted as censors for the church in reporting all swearing, sabbath-breaking, drunkenness and other "abominable sins," to the court held in December and April. Second, They kept the church building in repair and saw that the means for the sacrament were prepared. Third, They collected the minister's salary and presented to the vestry an account of all the disbursements and receipts.<sup>20</sup> The salary of the preacher, according to a law passed by the General Assembly of Virginia in 1696, was sixteen thousand pounds of tobacco. This was generally considered equal to one hundred pounds sterling in sweet-scented tobacco and eighty in lower grades, but as a matter of fact it ranged from one hundred and forty to one hundred and sixty pounds sterling, according to the grade of the tobacco. Five per cent was deducted for the collection of the minister's salary.

At the time Dr. Blair was appointed Commissary the religious condition of the colony was at a low ebb.<sup>21</sup> The clergy was much demoralized.<sup>22</sup> It will not do to make sweeping statements in regard to the clerical morality of that day, for the better class was probably in the majority. The preachers were sometimes unjustly treated. There is evidence that some of them were truly religious and devoted to their work. The precarious hold of the clergy upon their livings begot in them a spirit of indifference to duty.<sup>23</sup> The most common sin among them was drunkenness, and the things belonging thereto, such as profane language, quarrel-

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<sup>20</sup> Henning's Statutes, Vol. ii, pp. 51, 52.

<sup>21</sup> Perry, pp. 15, 16, 30: Hawks' Ecclesiastical History, Virginia, pp. 86, 87.

<sup>22</sup> Perry, pp. 15, 30, 31, 252, 363. Hawks, pp. 87-90.

<sup>23</sup> Perry, p. 15. Hawks, pp. 89, 90.

ing and neglect of duty. This condition of the clergy is not to be looked at by itself, for they, to a great degree, were children of their age. The evil habit of drinking was common from Massachusetts to the utmost extent of the southern colonies. The life of the people reacted upon the clergy as well as the life of the clergy upon the people. Again, the preachers for Virginia had to be obtained from England and it was difficult, for reasons that will be presently shown, to get men of great ability and character to come to the colony as missionaries. The best of them had good work and livings in England, so naturally the greater part of the preachers who came over were of an inferior order. The demand in the colonies for ministers was great, and the leading bishops of England, although they had the religious welfare of Virginia at heart, made a mistake in thinking that men of ordinary ability would do for a new country; for whereas if able men are needed anywhere it is in fields where the paths have not been marked out, where a standard has not been set, but where they must stand alone and create a standard by the sheer force of their own characters. Both this great demand, and the misunderstanding of the condition of the country, played their parts in contributing men for ministers whose characters were not above reproach and whose intellectual abilities were of a common order. The sinful and ugly conduct of a part of the clergy lowered the whole in the eyes of the people, and the church was not able to do the good which it ought to have done. These were the conditions and this the class of preachers that the Commissary had to deal with.

In his efforts to better the clergy, Dr. Blair labored under difficulties which deserve special mention. Probably the greatest natural hindrance arose from the fact that he was a Scotchman. Many preachers had a prejudice against him on that ground alone.\* These spoke of him as "one

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\* Perry, pp. 31, 37. College Papers.

Scot hireling." Yet every page of contemporary history of the time shows there was no man in Virginia whose character and mental ability was equal to that of Blair for filling the office of Commissary. A second incidental obstacle was found in the enemies he had created. He was a member of the Council, Judge of the High Court and President of William and Mary College, as well as Commissary and preacher, and by his earnest activity in these offices came in connection with all sorts of men, some of them became hostile to him. His troubles with the governors caused many of the clergy to be opposed to him. While Dr. Blair, being human, made errors, yet had he been perfect he would have made enemies, for he had to deal with officials, and others who were acting from self-interest and policy. A third unavoidable hindrance was the lack of a sufficient number of preachers for the churches. There were not enough to supply the parishes, so there was no such thing as making choice. A few years after Dr. Blair was made Commissary there were fifty parishes in Virginia and only twenty-two preachers all told.\*

We have now briefly stated the government of the church, the condition of the clergy at the time Dr. Blair became Commissary, 1689, and the hindrances under which he had to labor. His endeavors to better the clergy and the religious condition of Virginia, in general, may be spoken of under four heads: (1) by admonition and instruction to the ministers, for which purpose he usually called a convention of them; (2) by efforts to get more preachers from England; (3) by educating men in Virginia for the ministry. This will be spoken of in the following chapter and must be taken into account when estimating the good Dr. Blair accomplished for the clergy and the colony; (4) by his own example.

That he might get all the preachers together for encouragement and admonition, the Commissary called

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\* Perry, p. 11.



general conventions. At first these assemblies were held yearly. But when political factions arose among the clergy in regard to the governors, it became difficult to get them together, so the conventions were held only on certain occasions, as at the accession of a king, or of a bishop of London, or the appointing of a governor. The Commissary presided over the convention. One of the preachers was chosen as clerk of the meeting. On convening, the Commissary preached a sermon, then delivered any special charge to the ministers he wished, and read such letters as he might have from the Bishop of London or from the Governor addressed to the clergy. Then the convention was resolved into a free conference, so that any minister might propose anything he wished for the good of the church.<sup>22</sup>

In these assemblies the lives of the clergy were inquired into and efforts were made to correct any evils existing in them. The whole religious situation was often discussed. Occasionally, differences of opinion created a storm of discussion. Many papers were presented in these conventions and flashes of satire and sarcasm show that Virginia had some ministers of no mean intellectual ability. It also appears that the American spirit of religious freedom sometimes brooded over these clerical assemblies long before the days of Thomas Jefferson. The conventions often lasted two days, holding sessions morning, afternoon and night. The proceedings of some of these meetings are intensely interesting, and if the scope of this work allowed it, they might be entered here with both interest and profit. Dr. Blair preached many able sermons to the clergy and gave them much fatherly and Christian advice. But his preaching and admonition did not always do as much good as they should have done, because of the prejudice of some of the clergy and the hardened corrupt character of others. Their preconceived no-

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<sup>22</sup> Perry, pp. 144-179, 199-217.

tions prevented them from catching the spirit of what was said. In reading over the papers and proceedings of these clerical conventions, one is impressed by the calmness of mind maintained by Dr. Blair amid hot debates and even when shameful and undeserved sarcasm was hurled at him. When, in the convention of 1705, the ministers made a number of bitter attacks on the Commissary, Blair answered them in a quiet and masterly way. His calmness and earnestness amid angry and oftentimes thoughtless men, win our admiration. Blair possessed a rare power of self-control.

The Commissary not only used these public assemblies to discipline the clergy, but as far as time permitted, visited the parishes and spoke to the preachers individually.<sup>77</sup> When any minister was charged with drunkenness or other misconduct, Dr. Blair said he found it difficult to get reliable evidence, for while people would report such things in a general way, no one would come into his presence and testify to them. This kept him from getting at the truth, and hence from dealing properly with immoral ministers. Perhaps the greatest hindrance encountered by the Commissary in his visiting was the determined opposition and general aversion of the people to anything like a "spiritual court."<sup>78</sup> The very air of Virginia seemed to breathe a spirit of freedom into every one who placed a foot upon her soil.

Although Blair had a spirit of righteous indignation against immorality, yet, on the whole, he dealt gently with the clergy. He said that unless they were "notoriously scandalous" he found it necessary to content himself with admonitions, for if he suspended a man he had no one to put in his place.<sup>79</sup> During the first thirty-five years of his commissaryship he only suspended two ministers. June 20, 1723, he wrote to Mr. Forbes: "Because of the want of clergymen to fill vacancies, I choose rather to lean to the

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<sup>77</sup> Perry, p. 130.<sup>78</sup> *Ibid.*, p. 214.<sup>79</sup> *Ibid.*, p. 250.

gentle than the severe side." <sup>a</sup> The Commissary earnestly endeavored by instruction, by encouragement and by rebuke, when necessary, to correct and purify the clergy. Every speech and letter to the clergy unmistakably breathes a deep and earnest spirit for the improvement of the religious condition of the colony, and especially for raising the ministers above reproach.

Dr. Blair endeavored to secure a preacher for every parish. It is certain that in writing to the Bishop of London concerning the Church, he nearly always expressed a desire to have more preachers sent over to Virginia.<sup>a</sup> The intensity of his spirit in pleading for more ministers when materially they were to benefit him in no respect is striking. The explanation of all this is short: it is simply that Blair was a man of God and had the good of his people at heart. The Bishops of London, though they had much at home to occupy their time, were always mindful of the religious welfare of Virginia and ready to aid in any way. The thoughtfulness and the spirit of their letters to the Commissary are exemplary. They sent over ministers when they could. But owing to the fact that in the colony the preachers were employed by the year, instead of being inducted into their parishes or livings as in England, made it very difficult to get ministers to leave home and a place of certainty for a foreign land and a precarious living. Ministers to-day accustomed to being employed by the year hardly know what a hindrance this was to securing preachers for Virginia. As already mentioned, it was the duty of the Governor to induct ministers into the churches, but the vestrymen of each parish practically ruled all church affairs, employed and turned off their preachers according to their own desires and the Governor dared not oppose them. A preacher was rarely presented to the Governor

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<sup>a</sup> Perry, p. 251.

<sup>a</sup> Ibid., pp. 250, 318, 334, 357, 362.

for induction." The Commissary wished the Governor to induct the clergymen in order that more and better ones might come from England. He said ministers living in such precarious circumstances could not "match so much to their advantage as if they were settled by induction."<sup>a</sup> He wished them to marry in the best families for two reasons, that they might have helpful wives and raise themselves in the estimation of the people, and thus be able to do more good. The Commissary did what he could to keep the glebes in good condition and to raise the salary of ministers, that he might better their lot, yet the deep odium under which the ministry labored in the colony made it hard to persuade good men to come over, for the standing of the clergy appears to have been reported in England worse than it was. These obstacles did not abate, in the least, the Commissary's efforts to obtain more preachers. He kept writing to the bishops to send more ministers, and whenever he made a trip to England he urged them personally. His efforts were not in vain. In 1696, there were at least fifty parishes in Virginia and only twenty-two preachers. In 1707, there were nearly forty ministers." In 1723 Dr. Blair wrote the Bishop of London that there were "about ten vacancies and no ministers to supply them."<sup>a</sup> And in 1733 there were only two vacancies save some unfinished parishes. Two years later there were more vacancies owing to the death of four of the clergy and the completion of new parishes. But, in 1740, there were only four or five churches without preachers." And in 1742, one year before Blair's death, notwithstanding many preachers had been lost by death and several new parishes formed during his commissaryship, there were only "two vacant churches," so he wrote to the Bishop of London."

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<sup>a</sup> Historical Collections of the American Colonial Church, pp. 185, 250.

<sup>a</sup> Dr. Blair to the Bishop of London.

<sup>a</sup> Perry, p. 185.

<sup>a</sup> Ibid., p. 250.

<sup>a</sup> Ibid., pp. 362, 363.

<sup>a</sup> Ibid., p. 364.

Not the least of Blair's means of raising the clergy to a higher plane was his own upright life. His precepts to the ministers were good and his life was consistent with them. Amid all his trials, though eager enemies would have been glad to find something to injure him, there is not a single moral blemish recorded upon his character. His life stood out before the clergy as an exemplification of his teaching and admonitions.

This was not in vain. By reading Hartwell, Blair and Chilton's "*Present State of Virginia*,"\* written in 1693, and other literature of a later date, one can readily see there had been an improvement in the clergy." Hugh Jones, though no friend to Blair, said, in 1724, the bulk of the clergy "had a mind to do their duty and live happily."\*\* Dr. Blair never ceased to strive for the welfare of his people until his life ceased. The old man, when about eighty-five years of age, although he had struggled with the difficult affairs of a colony in a distant land for more than half a century, still preached "every Sunday," and, as far as his physical condition allowed, was active in fulfilling the three other offices he held. His constant and earnest activity while young for the religious welfare of Virginia, and the tenacity with which he still clung to the same purpose when many years above three-score and ten, plainly show Dr. James Blair to have been a man who sought not his own ease, but the good of his people and the exaltation of the One who stood by him in all of his tasks. The good effects of the fifty-eight years of faithful preaching, the fifty-four years of able commissaryship, and the upright life of Dr. Blair upon Virginia in her formative period can not be measured.

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\* Dr. Blair was one of the authors of this little history, which is the best account we have of Virginia and her government in the last part of the seventeenth century.

\*\* Perry, p. 213.

\* Jones' *Present State of Virginia*, p. 73.

## CHAPTER II.

### BLAIR AS THE FOUNDER OF WILLIAM AND MARY COLLEGE.

Dr. Blair not only had the religious but also the educational welfare of his country at heart. In his earnest efforts to promote the religious condition of Virginia he saw most clearly and felt most keenly the need of educated preachers. Since he was a man who always grasped the situation readily and prepared thoroughly for a work, he knew that without some place of learning at home where candidates might be taught, no great religious work could be done. Accordingly, he turned himself to the task of founding a college in Virginia where men might be educated both for the ministry and for the ordinary walks of life.

Long before Blair's time, efforts had been made to establish a college in the colony. In 1619, George Thorpe and George Sandys planned for a university in Virginia. Sir Edwin Sandys moved that ten thousand acres of land be granted for a university at Henrico. The grant was made. George Thorpe was chosen manager of the lands. Contracts were made with "brick makers." The Bishop in England raised the sum of fifteen hundred pounds to go toward a university. Many of the colonists were interested in the educational project and made donations to it.<sup>1</sup> It seemed that Virginia was soon to have the first college in America. But in the spring of 1622 the awful uprising of the Indians, in which Mr. Thorpe and

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<sup>1</sup> Neill's *Virginia Company*, London, pp. 137, 138, 146-149, 329, 330. Neill's *Earliest Efforts to promote Education in English North America*.

three hundred and forty settlers, including those on the university grounds, were massacred, put a sad and sudden stop to this noble movement in behalf of education. For the next seventy years little except some legislating was done toward founding a college in Virginia.

Two years after the Indian massacre the idea of a college for Virginia was revived. It was suggested that the buildings be located on an island in the Susquehanna River, that they might be protected from the Indians. In 1624, the island was granted for the "founding and maintenance of a university and such schools in Virginia as shall there be erected, and shall be called *Academia Virginiensis et Oxoniensis*."<sup>\*</sup> But the Academy never became a reality. The death of Mr. Edward Palmer, its principal advocate, brought the plan to an end.

In 1660, the Assembly of Virginia passed resolutions for the founding of a college and free school "for the advance of learning, education of youth, supply of the ministry, and promotion of piety."<sup>\*</sup> It was also voted that commissioners of the county courts take subscriptions for erecting a college, and that the commissioners send orders to the vestrymen of the parishes to raise money for the same purpose. "Considerable sums of money and quantities of tobacco"<sup>\*</sup> were subscribed, but nothing material was accomplished.

It is not strange that these several attempts failed, for while many colonists were in earnest about education, the majority of them had their hearts turned toward pleasure and an easy life, or were set on making money. Some among the highest classes were not much in favor of education. We hear Sir William Berkeley, Governor of Virginia, saying: "I thank God there are no free schools or printing, and I hope we shall not have them these hundred years."<sup>\*</sup> It is just to say that ten years before making

<sup>\*</sup> Neill's *Virginia Vetusta*, p. 183.

<sup>\*</sup> *Ibid.*, ii, 37.

<sup>\*</sup> Hening, ii, 25.

<sup>\*</sup> *Ibid.*, ii, pp. 511, 517.

this statement, Berkeley had subscribed to the cause of classical education. Then means for establishing a college were extremely scarce in those early days of the colony. Another hindrance was the fact that the people of Virginia were scattered over the country and so it was more difficult to get them interested in establishing colleges than it would have been had they been settled in towns.<sup>6</sup> Again, there were always disputes as to where a college should be located.<sup>7</sup> But that which was lacking, perhaps more than anything else, was a man to stand by and push through an educational project in those trying days of beginnings. The man to fill the place was eventually found in the person of James Blair, the able and persevering Scotchman.

Commissary Blair, in 1690, set himself to the work of founding a college in Virginia, there being at that time only "one privately endowed school and a few old field schools" in the colony.<sup>8</sup> He talked education in such a manner as to "infuse fire into the cold hearts" of the people and especially into the Burgesses. Together with others of the clergy, he prepared "Several Propositions to be humbly presented to the consideration of ye next General Assembly, for ye better encouragement of learning, by the founding a college in this country to consist of three schools, *viz.*, Grammar, Philosophy, and Divinity."<sup>9</sup> This memorial asked the General Assembly to petition the king and queen for a charter for a college, a grant of land, a part of the quit-rents of Virginia and other small revenues to go toward establishing the school. The proposition also contained a general plan for its foundation and government. The Council of State approved this plan as an "excellent design" and empowered and authorized Dr. Blair and several other prominent men to solicit subscriptions and gifts to defray the charges of a college

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<sup>6</sup> Adams' College of William and Mary, p. 14.

<sup>7</sup> See page 37.

<sup>8</sup> Cook's History of Virginia, p. 305.

<sup>9</sup> College Papers, bundle 636.



building."<sup>10</sup> The subscription papers show that the motive behind the enterprise was threefold: "The Education of our Youth, a constant supply of our Ministry and perhaps a foundation for ye Conversion of our neighboring Heathen (Indians) to the Christian Faith." Some money was subscribed but not sufficient.<sup>11</sup> In May, 1691, the General Assembly appointed Dr. Blair to go to England and solicit a charter and funds for a college in Virginia.<sup>12</sup> He was requested to seek the assistance of the Bishop of London in obtaining a charter from the Crown. His instructions were quite full, but so great was the Assembly's confidence in his character and ability he was told to do as he should "think necessarie" in presenting the supplications to their majesties.

In June, 1691, Dr. Blair set sail. On arriving in London, in September, the difficulties which confronted him were discouraging.<sup>13</sup> King William was in Flanders seeing to the affairs of the war in which England was involved; the Bishop of London from whom Blair was to seek advice was sick; the Archbishop of Canterbury, whom the king trusted wholly in ecclesiastical matters, was at Lambeth, and as the winter came on he was frozen up there for five weeks before he could get to London; Parliament and Council were completely absorbed in the business of the war. Though the situation was most discouraging, Dr. Blair made the very best of it. He idled no time away, but spent his spare months in trying to raise money for the college, and these efforts resulted eventually in the donation, known as the Boyle fund and other gifts, in all, several hundred pounds sterling. In obtaining the charter, Dr. Blair showed excellent judgment. Late in the fall when the Bishop of London recovered, Blair went to him with the

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<sup>10</sup> College Papers, bundle 636, p. 5.

<sup>11</sup> Hartwell, Blair and Chilton's Present State of Virginia, p. 70.

<sup>12</sup> America and West Indies papers, bundle 638, p. 10.

<sup>13</sup> Historical Collections, Virginia. W. S. Perry, pp. 3-8 or Blair's letters.

project. He received him cordially and promised his support. He advised Blair to take the college business before the council and committee on plantations. Dr. Blair did not wish to do this, but desired to present it through the bishop directly to the king and queen. For, he said, he wished not only to obtain a charter, but also as large funds as possible for a college. He explained that the church party was in the minority in the council and that, while the council might grant a charter, it would not be inclined to make any gift of money. Dr. Stillingfleet, Bishop of Worcester, favored Blair in this plan and told him that he had the right idea about accomplishing his mission, and to this the Bishop of London then agreed.<sup>14</sup> While waiting for the king to return to London and for him to attend to urgent war matters, Dr. Blair used the time in explaining to the bishop and the queen his mission, winning their favor, and preparing all things as far as possible before the petition for a charter should be presented to the king and the council.<sup>15</sup> When the Archbishop of Canterbury came to London, he aided the cause. In company with the archbishop, Dr. Blair went to Queen Mary and made known his mission. The queen welcomed the Commissary and "graciously approved" the founding of a college in Virginia. Later, when the college proposal was mentioned to the king, he was much pleased with it and frankly promised to give something toward it, if he could find any revenues in Virginia fit to give. When the time arrived to present the petition formally to the Council, Dr. Blair, having been introduced by the Archbishop of Canterbury and Lord Effingham, presented it in an appropriate manner, and when he closed his remarks his Majesty said: "Sir, I am glad that colony is upon so good a design and I will promote it to the best of my power."<sup>16</sup> Dr. Blair was asked to give to the Bishop of London a scheme for the college

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<sup>14</sup> Perry, p. 5.<sup>15</sup> College papers, Blair's letters.<sup>16</sup> Perry's Historical Collection, Virginia, p. 6 (Blair's letters).

and an account of what was expected for it, that it might be brought before the Committee on Plantations. All necessary steps in regard to the matter having been taken, the charter was granted February 19, 1693, the institution to be known by the name of "The College of William and Mary," in honor of the king and queen. With the charter the king and queen gave toward the college nineteen hundred and eighty-five pounds, fourteen shillings and ten pence out of the quit-rents of Virginia." They also granted for the same purpose a tax of one penny on every pound of tobacco exported from Virginia and Maryland; the fees and profits arising from the office of surveyor-general, which was put under the control of the college; and twenty thousand acres of land, ten thousand of which lay south of the Blackwater and the other ten in the Pamunkey Neck." Dr. Blair was sent with a royal order to Seymour, the attorney-general, to issue a charter. Seymour hesitated. He argued that England was engaged in an expensive war and could not afford means to erect a college in Virginia. Dr. Blair explained that the institution was to educate young men to preach the gospel. He said the Virginians had souls to be saved as well as their English countrymen. To which Seymour replied, "Souls, damn your souls! Make tobacco!" Such were the obstacles that confronted Blair in this enterprise. While it is true that the bishops and others in authority encouraged and supported the educational ambition of the American colony, yet many Englishmen, business men and men of office, cared nothing for the intellectual welfare of Virginia. By them "all possible objections were made to the project, as a design that would take our planters off from their mechanical employments and make them grow too knowing to be obedient and submissive."<sup>17</sup> Their ideas were to use

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<sup>17</sup> College papers.

<sup>18</sup> Charter (attached to William and Mary Catalogues, Richmond, 1870).

<sup>19</sup> Bishop Burnet's History of His Own Time, p. 597.

the inhabitants of the colony as instruments out of which to make all the money they could. But the attorney-general swore to no purpose. Blair was not a man who could be baffled. He went after the charter and he obtained it. He brought it over to Virginia in the spring of 1693.

By the charter Blair was "created and established first president during his natural life."<sup>a</sup> The General Assembly also elected him president of the college.<sup>a</sup> The charter provided for the organization of the institution, stating that the faculty of the college should consist of a president and six professors or masters, and that it should be a place of universal study of "Divinity, Philosophy, Languages and other good arts and Sciences." It provided a board of trustees, sometimes called visitors and governors, that should not exceed twenty in number.<sup>a</sup> These chose the president, professors, rector, and chancellor. The rector of the college was appointed yearly. Dr. Blair was the first one. The chancellor was appointed every seventh year. Dr. Henry Compton, Bishop of London, was the first chancellor. The board of trustees or visitors had general control of the school. But the charter provided that after the college should be founded and erected, the trustees should grant and transfer to the president and professors the "Lands, Manors, Tenements, Rents, Services, Rectories, Portions, Annuities, Pensions, and Advowsons of the churches, with all other inheritances, franchises, possessions, goods, chattels and

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<sup>a</sup> Charter.

<sup>a</sup> Blair was allowed 250 pounds for his trouble in getting the charter.

<sup>a</sup> In the charter the first trustees of the college are mentioned, "Francis Nicholson, our Lieutenant-Governor in the Colonies of Virginia and Maryland. Wm. Cole, Ralph Wormly, William Byrd and John Lear, Esquires; James Blair, John Farnifold, Stephen Fouace and Samuel Gray, clerks; Thomas Milner, Christopher Robinson, Charles Scarborough, John Smith, Benjamin Harrison, Miles Cary, Henry Hartwell, William Randolph and Matthew Page."

Personal estate." This was to be done in order that the president and professors might not be interfered with in any way. These persons should also form a "body politic and incorporated in deed and name." The faculty had full and absolute power to nominate and elect one of their number, or any able man they wished, to the House of Burgesses to represent the interest of the college.<sup>22</sup> The salary of the president was one hundred and fifty pounds a year, and that of professors eighty pounds each, together "with twenty shillings entrance, and twenty shillings a year, for pupilage for each scholar."<sup>23</sup> Such, in brief, was the organization of the College.

As soon as Dr. Blair reached Virginia in 1693 he turned himself to the task of having the college building erected. The plan of this had been prepared by Sir Christopher Wren. It was begun but was not completed before there was need of more money. The House of Burgesses strengthened the royal endowment by permanently levying an export duty, of an average of seven and one-half per cent, on furs and skins for the support of the college.<sup>24</sup> Nicholson, then Governor of Maryland, entered heartily in the good work and gave one hundred and fifty pounds. A considerable sum of money, twenty-five hundred pounds or more, had been subscribed by Virginians, but only a very small part of it could be collected.<sup>25</sup> First, they had subscribed, "some to oblige and curry favor with his excellency"—the governor who had issued a brief for subscriptions, "others hoping and supposing it (the college project) would come to nothing, and others for the Commissary's sake, that they might not be thought singular and enemies to so good a worke, putt their hand to the Briefe and could never be reconciled to the college" afterward.<sup>26</sup> These not only

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<sup>22</sup> Charter.

<sup>23</sup> *The Present State of Virginia*, Hugh Jones, p. 27.

<sup>24</sup> Henning, iii, pp. 123, 124.

<sup>25</sup> Hartwell, Blair and Chilton's *Present State of Virginia*, p. 70.

<sup>26</sup> College papers.

would not pay but became "enemies to the College on the account of their subscriptions toward it."

Second, many of the subscribers were "angry" and would not pay because the college had been situated at Middle Plantation, later Williamsburg.<sup>22</sup> "Every one" wanted it "in his own county or neighborhood." In the above statement we see plainly how hard it was to get the early settlers in Virginia to work together in anything for the common good. In the third place, some subscribers raised the objection that the president was receiving his salary before the college building was actually finished and the school became a college, and, therefore they would not help.<sup>23</sup> Manifestly, it was more work and worry to the president to raise the money, have the building erected and raise the standard of the school to a college than to act as president after the school should be well established. When Dr. Blair returned from England, he offered to go to his parish in Henrico, where he was inducted into a living, and not to receive any salary until the building should be constructed, but the governors of the college would not listen to any such thing. They said that Blair had been the manager of the whole business and they were afraid that it would still come to nothing<sup>24</sup> if he were not at the head of it. So they voted for him to leave his parish at Henrico and come and carry on the college work with "all diligence." Blair was not only the originator of the college, but its very life. Lastly, the collectors of the penny a pound on tobacco, were prejudiced against the college and "began personally to entertain odium against it," because "that money was directed from their coffers into another channel by being given to the college."<sup>25</sup> As it was the collectors cheated the college out of a great deal of revenue. Besides the lack of money, Dr. Blair had enemies who opposed him. It was impossible that an active,

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<sup>22</sup> Hening, iii, 122.

<sup>23</sup> New York Archives, Vol. iii. Also College papers.

<sup>24</sup> Perry, pp. 41, 42.

<sup>25</sup> College papers.

earnest man, working with men who often acted merely for gain and from other superficial motives should not have some enemies. But he never thought of giving up the work because of opposition and the lack of money. He gave a part of his salary. His friends advanced money to the college. So the work went on. The office of surveyor-general began to bring in money about Christmas, 1696 or 1697, and yielded annually about fifty pounds.<sup>22</sup> About 1697, the ten thousand acres of land south of the Blackwater Swamp were leased. There was a dispute about the ten thousand acres in the Pamunkey Neck, and it was some time before it yielded a revenue to the college.<sup>23</sup> It appears from the accounts which are before me, that the college building cost three thousand and eighty-nine pounds.<sup>24</sup> This amount includes some small amounts paid to the teachers. We have a good description of the appearance of the college in Professor Hugh Jones' "Present State of Virginia." "The front which looks due east is double, and is 136 feet long. It is a lofty pile of brick building, adorned with a cupola. At the north end runs back a large wing, which is a handsome hall, answerable to which the chapel is to be built; and there is a spacious piazza on the west side, from one wing to the other. It is approached by a good walk, and a ground entrance by steps, with good courts and gardens about it . . . and a large pasture enclosed like a park with about 150 acres of land adjoining for occasional uses."<sup>25</sup> This description was given of the second building, but the model was the same as the first and tradition says the general appearance was.

Teaching was begun before the building was completed. The grammar school was started in 1693,<sup>26</sup> the same year that Blair returned from England. Thus we see that in

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<sup>22</sup> Hartwell, Blair and Chilton's *Present State of Virginia*, p. 69.

<sup>23</sup> "Board of Trade," *Virginia*, Vol. vi.

<sup>24</sup> College papers.

<sup>25</sup> *Present State of Virginia*, Hugh Jones, p. 26.

<sup>26</sup> College papers.

less than three years from the time Blair began to infuse fire into the Burgesses about the college he had been to England, obtained the charter, returned and put the college in operation. The grammar school was "well furnished with a good school master, usher and writing master."<sup>17</sup> Mongo Inglis, M. A., a Scotchman of ability, was the first professor of the grammar school. This grammar school, which was for the "education of the youth of the Colony in the Latin and Greek tongues" was all that the college had for several years. It was the corner-stone of the institution. The college soon did good work, for in the report made by ten of the most prominent men of the time, we read: "The scholars make great proficiency in their studies to the general satisfaction of their parents and guardians."<sup>18</sup> In May, 1697, the House of Burgesses attended exercises at the college and spoke with commendation of the studying the students were doing. That year there were twenty-nine students.<sup>19</sup> The first Commencement was held in the closing year of the century. It was a grand occasion for the colony and attracted visitors from far beyond the bounds of Virginia. "There was a great concourse of people; several planters came thither in coaches and others in sloops from New York, Pennsylvania and Maryland, it being a new thing in that part of America to hear graduates perform their exercises. Indians had the curiosity, some of them, to visit Williamsburg upon that occasion; and the whole country rejoiced." As mentioned above, it was several years before the college became more than a grammar school. The growth of the institution was slow, often its plans were crippled from a lack of adequate funds. But this would not be doing justice to the real circumstances. There were two other things that hindered the growth of the college enough to demand mention here.

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<sup>17</sup> Board of Trade, Virginia, Vol. vi.

<sup>18</sup> Board of Trade, Virginia, Vol. vi.

<sup>19</sup> William and Mary College Quarterly, Vol. i, p. 130.

<sup>20</sup> Campbell's History of Virginia, pp. 361, 362.



First, Dr. Blair's troubles with governors of Virginia, and second, the discord between the President and Professor Mongo Inglis, the leading master in the school. The trouble of Dr. Blair with the governors caused him to have to make two trips to England and these took much of his time and attention from the college when it needed him most. The contentions divided the people into factions and it was nothing but natural for the most of those who opposed the president to oppose the college, since he was the head of it. These disturbances were also the cause of a number of students being taken from the college.<sup>a</sup> The discord between President Blair and Professor Inglis was very injurious to the college for a few years. This arose largely from misunderstandings and the reports of tale-bearers. Professor Inglis, a man of considerable ability, but who would talk too much, became extremely angry with President Blair. He threatened to give up his professorship and let the college go to nothing, for, he said, the whole reputation of the institution was derived from himself. He declared that the school would never amount to anything while Blair remained president, for, said he, the president used it only as a "tool with which to enrich himself" and as a "stalking house" by which to carry on designs against governors and turn them out of office. Professor Inglis spoke as disrespectfully of Blair as he could. He even accused him of trying to break up the college. But, unfortunately for the professor's charges, they contradict themselves. While, on the one hand, they make Blair to get his riches and all of his power from the college, on the other, they accuse him of trying to ruin the institution—that which Blair knows to be the source of his income and power.

This dispute threw a damper over the whole school, partly unfitted Professor Inglis for his work, and destroyed the harmony that should exist between the President and

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<sup>a</sup> College papers.

the Professor. Dr. Blair seems not to have become angry with Mr. Inglis, but tried to reason the matter with him. No attempt will be made here to give a full account of the causes of Mr. Inglis' falling out with Dr. Blair, for that would be discussing them farther than their importance deserves. I only mention briefly a few of the causes as stated by Mr. Inglis himself, while irritated: "First," he said, "Dr. Blair ordered his brother's son, John Blair to be taken from the college, and that this was the cause of Dr. Blair's friends taking six more students from the school, which students were boarding with Inglis." Each student paid to Mr. Inglis twenty shillings entrance fee and the same sum for tutorage, and this, together with the money for board, touched Mr. Inglis' pocketbook very sensibly. This, according to his own statements, was the chief reason of his hatred toward the President. But Dr. Blair said he did not order his nephew to leave the college, and, furthermore, that he was away in England when the boy left and knew nothing of it at the time. "Second," Mr. Inglis said, "the President was using the college as a 'stalking house' to serve him in turning out governors." "Third," because of Dr. Blair's ingratitude to Governor Nicholson, "the great patron of the college." "Fourth," because Dr. Blair had "injured and disgraced" his (Inglis) scholars and himself by statements he made in an affidavit against the Governor. The gist and truth of the whole matter is this: Mr. Inglis thought Dr. Blair had been the cause of the seven students being removed from college and these removals, according to the professor's own words, touched his pocket considerably as well as his reputation as a professor. And furthermore he was a friend to Nicholson, Blair's enemy, hence from both his feeling and the custom of the time, it was natural for him to be an enemy of Dr. Blair.\* The president managed this trouble between himself and the professor as ably as the circumstances permitted. To-

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\* College papers. Mongo Inglis' letters. N. Y. Archives, Vol. i.

gether with these drawbacks to the college followed another of a different kind. As already intimated, the college building had been erected only about ten years when it burned down. This took place in 1705. "Very little saved that was in it," says Beverly, "the fire breaking out about ten o'clock at night, in a public time. The Governor and all the gentlemen came up to the lamentable spectacle." "But the fire had got such a power . . . there were no hopes of putting it out." This, indeed, seemed discouraging, since there were no funds on hand with which to rebuild. But it is said that Dr. Blair was not discouraged. Not for a moment did the President and the best friends of the college think of giving it up. The college had won friends from among its former enemies. Its presence had stimulated an educational impulse.

The president and other trustees put themselves to the task of rebuilding. The second building did not go up nearly so fast as the first. When Alexander Spotswood was appointed Governor, in 1710, he encouraged the President and helped toward the building. Finally the edifice was restored. The second building, while like the first in general appearances, was more beautiful. It was not "altogether unlike Chelsea Hospital."<sup>a</sup>

Besides the main edifice there was also one for the education of Indians. Few people of to-day know how much interested the early settlers of Virginia were in educating and Christianizing the Indians. They were in earnest about the matter. In connection with the early movements for colleges there was always something said about educating the Indians. There is scarcely a petition that states the purpose of founding William and Mary College but that expresses the intention of educating the natives of America.

The promoters of the educational project carried this intention into effect. Hon. Robert Boyle, who died in England in 1791, ordered his executors "to apply his per-

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<sup>a</sup> Present State of Virginia, Hugh Jones, p. 26.

sonal estate to such charitable and pious uses as they, in their discretion, should think fit.”<sup>44</sup> The Boyle bequest, £5400, was invested in a landed estate called the Brafferton. While in England, in 1692, Dr. Blair had partly secured this bequest. In 1697 he went back to England, and, aided by the Bishop of Canterbury, obtained the most of this bequest for the College of William and Mary.<sup>45</sup> A part of this legacy went to Harvard College. By means of the Boyle endowment the College of William and Mary erected a building called the “Brafferton,” solely for Indian education, which purpose it long served. It was a “handsome house” and had twelve rooms.<sup>46</sup> This building is still standing and is used as a dormitory for students. The Indian school had a master or professor.<sup>47</sup> Governor Spotswood, during his administration, abolished the petty tribute formerly exacted from certain Indian tribes on condition that the “chief men” should send their children to the college to be educated. From hostile tribes young Indians were taken as hostages to be educated, who served to maintain the public safety. The queen of the Pamunks sent her son to the college. Many of the Indians who came to the school took much interest in the studies. During Spotswood’s régime there were nearly twenty Indians at the college at one time. It seems that this Indian department did well at the start. Governor Spotswood in a communication to the Bishop of London, dated July 26, 1712, speaks of the success of the experiment, but of the insufficiency of the endowment. The Indians, he says, “are decently cloathed and maintained, so that they seem very well pleased with the change of their condition as indeed their parents and others of their nations, who come frequently to see them, express much satisfaction with the care that is taken of them, and frequently lament their own

<sup>44</sup> H. B. Adams’ *William and Mary College*, p. 16. Perry, p. 8.

<sup>45</sup> Duychinck’s *Cyclopedia of American Literature*, Vol. i, pp. 87, 88.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Letters of Governor Spotswood*, i, p. 174.

misfortune in not having like advantages in their youth; but, as the revenue of the college settled by Mr. Boyle for that service is insufficient to support so great a charge, I hope your Lordship will use interest for obtaining some contributions from the Society for propagating the Gospel to Promote so good a design."<sup>a</sup> But this Indian department never did the good that its promoters had thought and hoped. The disposition of the roving Indian who had been hemmed in only by the gilded horizon and blue canopy of the heavens was not adapted to academic walls. Many became dissatisfied in school and pined away and died.

The college for the whites, under the guidance of its able and devoted president, increased in size and usefulness. The board of visitors and governors met often to attend to the business of the college and look after gifts and endowments. The proceedings of these meetings were well kept. They contain not only such transactions as selecting professors and choosing visitors, but they have the minutest details of the college business."<sup>a</sup>

Notwithstanding that the governors of the college attended closely to their duties, the institution was cheated out of a great deal of the revenue belonging to it."<sup>a</sup> From time to time gifts of more or less importance were added to the funds."<sup>a</sup> In 1718, the General Assembly, acting on the advice of Governor Spotswood, gave one thousand pounds. In 1726, the House of Burgesses put a duty on liquors, which revenue was given to the college."<sup>a</sup> The Assembly's appropriation and the income from liquors were both used in establishing scholarships. Colonel Hill, of Shirley, and Robert Carter, of Corotoman, together gave two hundred pounds for the endowment of a scholarship. Mrs. Elizabeth Harrison, of Surry, contributed three hun-

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<sup>a</sup> Letters of Governor Spotswood, Vol. i, p. 174.

<sup>a</sup> Virginia Magazine of History, Vols. iii and iv.

<sup>a</sup> Henning, Vol. iv, pp. 429, 430. College papers.

<sup>a</sup> Henning, Vol. iv, p. 74. <sup>a</sup> Henning, Vol. iv, pp. 148, 432.

dred pounds, and Mrs. Thomas Bray, of New Kent, two hundred. The college had a library containing a remarkable number of volumes considering how few books there were on this side of the Atlantic." From time to time books were donated to it from private libraries. When Alexander Spotswood died, in 1740, he bequeathed his books, maps and mathematical instruments to the college."

Until 1711 the faculty of the college consisted of President Blair, a grammar professor, Mongo Inglis, an usher, James Hodges, and a writing master. The building having been destroyed by fire in 1705, the money that would have employed other professors had to go toward the new building. In 1711, Mr. Lefevre was elected first professor of mathematics." The exact times when other persons were added to the faculty is not known, but by 1729 it contained the full number intended by the charter—six professors, graduates of Edinburgh, Oxford and Cambridge." It was the first college in America to have a full faculty. Bartholomew Yates and Francis Fountain were the professors of theology, William Dawson and Alexander Irwin, of philosophy and mathematics; Joshua Fry, of the grammar school, and Richard Cocke, of the Indian school." The classical languages, Oriental languages, divinity, mathematics and philosophy were now taught.

It was thus that President Blair, against fire, personal opposition, and scarcity of money, brought the college to its full size and to success. In 1729, as the original charter had provided, it was transferred to the president and professors." Its work did not disappoint the founder in his expectation of good. It did much in raising the standard of the ministry at the time and played an important part

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"Virginia Magazine of History, Vol. iv, p. 161.

"Winsor's Narrative and Critical History of America, Vol. v, p. 267.

"Virginia Historical Collections, Vol. i, pp. 103, 156, 158.

"William and Mary Historical Papers, Vol. ii, p. 65.

"Transfer of the College.

"Transfer; attached to William and Mary Catalogues, Richmond, 1870.

in educating statesmen. Concerning ministers, Bishop Meade said: "It is positively affirmed by those most competent to speak that the best ministers were those educated at the college." We need make no comment on the statesmen who have studied in the halls of old William and Mary College. Their names speak for themselves. Among them were Jefferson, Monroe, and Tyler, Presidents of the United States; John Tyler, Governor of Virginia; Peyton Randolph, first President of the Continental Congress; Edmund Randolph, Governor of Virginia; John Mercer, Governor of Maryland; James Innes, Attorney-General of Virginia; John Blair, Bushrod Washington and Philip Barbour, Judges of the Supreme Court of the United States, and the great Chief Justice John Marshall. Besides these, the college has sent out fifteen Senators, a greater number of Representatives, fifteen Governors, more than thirty judges, two commodores, nine members of the Cabinet, and a number of other men of public trust and high position. In founding William and Mary College, Dr. Blair put in motion a mighty power to shake the British throne and set the American conscience free. It was during his two years of study at William and Mary College that Jefferson was inspired with the thoughts that expanded his mind and gave him his idea of an educational system. He says: "In the spring of 1760, went to William and Mary College, where I continued two years. It was my great good fortune, and what probably fixed the destinies of my life, that Dr. William Small, of Scotland, was then Professor of Mathematics, a man profound in most of the useful branches of science, with a happy talent of communicative, correct and gentlemanly manners and an enlarged and liberal mind. He, most happily for me, became soon attached to me, and made me his daily companion when not engaged in the school; and from his conversation I got my first views of the expansion of science, and of the system of things in which we are placed."\*

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\* Dr. Foote's *Sketches of Virginia*, p. 155.

Professor Herbert B. Adams, in his monograph on "William and Mary College," says: "Virginia is called the mother of presidents, but the College of William and Mary, the *alma mater* of statesmen, is only another name for Virginia." It is proper to add here that, though William and Mary College has been partially destroyed by fire several times, and greatly injured by both the Revolutionary and Civil Wars, it is doing a good work at the present time. It stands to-day as the first American college that received a charter, the first in the world planned by English colonists, and the second, in point of time, actually established in America.



### CHAPTER III.

#### BLAIR'S CONNECTION WITH THE GOVERNORS OF VIRGINIA.

Besides being Commissary and President, Blair was also a member of the Council of Virginia. He was appointed to this office by the king in 1793.<sup>1</sup> This Council corresponded to the Upper House in England and its duty was to advise and assist the Governor in all important matters of government about which he might consult them.<sup>2</sup> When the Council acted with the House of Burgesses, it formed what was called the General Assembly. As a member of the Council, Blair was a judge of the highest court in the colony. He was president of the Council for many years. No man in the colony held as many important offices as Blair. He was always busy working for the welfare of the colony either as Commissary or preacher, as President of the College, or as a member of the Council in its different functions. Wherever Dr. Blair was, he counted for something. When he believed any line of action to be right he adhered strictly to it.

The governor was ordinary to the king and to the Bishop of London, hence his relations with Blair were close and in some cases almost inseparable. As ordinary, it was the governor's business to induct the ministers upon presentation of them by the vestrymen, and in case they did not present candidates in six months, the governor had the

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<sup>1</sup> Hartwell, Blair and Chilton's Present State of Virginia, p. 35. Campbell's Virginia, p. 356. Some writers differ regarding the date, but according to Blair's own statement it was 1793.

<sup>2</sup> Hartwell, Blair and Chilton's Present State of Virginia.

right to induct preachers without presentation.<sup>1</sup> There were frequent misunderstandings and disagreements between the Commissary and Governor about induction and other church matters. Thus Blair's many sided duties and the energy and earnestness with which he worked, frequently brought him in collision with prominent men of the colony. He was involved in difficulties with clergymen and governors during the greater part of the period of his commissaryship and presidency of the college. Troubles arising from the Church, the Government and the College caused controversies and opposition between Dr. Blair and three governors—Andros, Nicholson, and Spotswood. There are hundreds of pages of manuscript and letters relating to the conflicts of these colonial authorities. Some of the trials in Lambeth Palace are reported in full and are extremely interesting.

Sir Edmund Andros became Governor of Virginia in 1692, at the time the college was being founded. He came from New York where he was in bad repute. He opposed the founding of the school.<sup>2</sup> He spread among the voters the fear that taxes would be increased should the college be established. He never paid anything himself toward its support, and it is said his friends did not. He once promised brick to build the chapel and then withdrew his promise.<sup>3</sup> In trying to exert an influence against Dr. Blair, the governor complained even because he was a Scotchman. At another time he suspended Blair from the Council without holding any trial or even informing him, because he had spoken of the governor's obstruction of the college.<sup>4</sup> When reported, the king disapproved of the action and restored Blair to the Council. Even after this, Andros had the audacity to declare that he was not eligible because he was born in Scotland.

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<sup>1</sup> *Laws of Virginia*, p. 3. Perry, pp. 243, 244.

<sup>2</sup> Perry's *Historical Collections*, Virginia, pp. 18-29.

<sup>3</sup> Perry, pp. 54-57.

<sup>4</sup> Hartwell, Blair and Chilton's *Present State of Virginia*, p. 36.

In 1697, Blair went to England to attend to getting the Boyle legacy for the college. At the same time complaints were made against the governor and Blair then brought thirteen charges against Andros as an enemy to the church, the clergy, and the college.<sup>7</sup> There were no petty personal complaints in these charges, although numerous. They all pertained to matters of importance to the colony. Five were in regard to the church and the clergy. The governor never tried to fill the vacant parishes. He made no attempt to induct the ministers into their livings. He did not favor them in their salaries when he could have done so. When the clergy were shamefully treated and brought their complaints before the governor, he paid but little attention to them. Eight other charges were concerning the college. In substance they were that Governor Andros favored the enemies of the college; paid nothing himself and tried to influence others not to pay their subscriptions; put difficulties in the way of the college receiving its revenues, and hindered the meetings of the trustees or the governors of the college. The trial took place in Lambeth Palace, December 27, 1697, and lasted two days. Blair had strong foes to meet. The governor had sent over his defenders, Colonel Byrd, of Westover, Mr. Harrison, of Surry, a Mr. Marshall and a Mr. Povey, to arraign Dr. Blair before the Archbishop of Canterbury and the Bishop of London.<sup>8</sup> They brought forward two accusations against Blair. He successfully refuted both of them, for they were weak. The first was that the Commissary had filled the parishes with Scotchmen against the people's desires. Dr. Blair's opponents had made a blunder. Certain Englishmen had been taken for Scotchmen. The other charge was that Blair took his salary as president before the college was completed. Blair answered that

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<sup>7</sup> Perry, pp. 10-29, 32-36. Fulham Mss., Nos. 594 and 1029.

<sup>8</sup> Perry, p. 36. Meade's *Old Churches and Families*, Vol. i, p. 158.

though the General Assembly and the charter of the college had given him a right to the president's salary, yet he had told the governors of the college, when he returned to Virginia in 1693, that if they thought "the business of the president unnecessary at present" he had a good living at Henrico and would go there and stay until he was needed. But after "free debate upon the subject" the trustees of the college agreed that as he had been managing the business of the institution in Virginia and in England, "they were afraid it would still come to nothing," if he was not head of it, therefore voted that he should leave his parish and remove "to the place where the college should be built, and carry it on with all diligence."<sup>9</sup> Accordingly, he moved.

On the other hand, Dr. Blair sustained for the most part his charges against the governor, often making his opponents admit their truth.<sup>10</sup> The calmness, frankness, and knowledge with which Blair spoke gave his words additional power. Bishop Meade has truly said: "Never were four men more completely foiled by one."<sup>11</sup> The trial, or the examination, resulted in the exoneration of Dr. Blair and the recall of Governor Andros.

In 1698, Sir Francis Nicholson, who had been the Deputy Governor of Virginia in 1690 and 1691, was again appointed to that office. The Earl of Orkney was the nominal governor but remained in England. During Nicholson's first governorship, he and Blair were strong friends.<sup>12</sup> Nicholson favored the college project and contributed liberally, and Blair wrote him many letters expressing the greatest appreciation and gratitude. When Nicholson came to Virginia the second time, he got along agreeably with the Commissary for awhile, yet from the very beginning seemed to be a changed man. Many people of the time remarked the

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<sup>9</sup> Perry, p. 42.

<sup>10</sup> Perry, pp. 36-65. Campbell's Virginia, pp. 356, 357.

<sup>11</sup> Meade's Old Churches and Families, p. 158.

<sup>12</sup> College papers and Blair's letters.

change. While governor of Maryland he had disagreed much with Commissary Bray,<sup>13</sup> and that experience gave indication of what might follow. On the day of the publication of the governor's commission, Dr. Blair took it to him, and in accordance with advice from Nicholson's friends and in the name of the Bishop of London, recommended, in the best of spirit, moderation in his administration. Nicholson replied very hotly: "G— — I know better how to govern Virginia and Maryland than all the bishops in England; if I had not hampered them in Maryland and kept them under, I should never have been able to have governed them."<sup>14</sup> Dr. Blair answered: "I do not pretend to understand Maryland, but if I understand anything about Virginia they are as good-natured, tractable people as any in the world, and you may do what you will with them by the way of civility, but you will never be able to manage them in that way you speak of—by hampering and keeping them under." By nature, Nicholson was self-willed, high-tempered and vain. He always wished to have his way, whether in affairs of politics, love, or anything else. His tyrannical and passionate actions turned many people against him.

In a few years Blair and Governor Nicholson were completely at variance with each other. Without doubt the tyranny, profanity, immorality, and ridiculous actions of Nicholson caused Blair to oppose him as governor. When the least angry, he collared and cursed attorney-generals; "assaulted ministers; took off their hats and called them villains, rogues, rascals and banditti."<sup>15</sup> He swore at members of the Council and applied to them his usual list of opprobrious names, "rogue, rascal, cheat, dog, villain, and coward."<sup>16</sup>

The governor's acts were offensive enough, but a love affair brought out his worst qualities and made him almost

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<sup>13</sup> Meade, p. 158.

<sup>14</sup> Perry, pp. 76, 77.

<sup>15</sup> Perry, pp. 101, 102.

<sup>16</sup> Ibid., pp. 90, 91.

<sup>17</sup> Ibid., p. 98.

as a mad man. This affair had so much influence upon Nicholson and increased the disagreement and enmity between him and Dr. Blair to such a degree that it requires mention here. In fact, many of the people of the time said it was this that changed Nicholson. Major Lewis Burwell, who lived near Williamsburg, had nine daughters, with one of whom the governor had the misfortune to fall passionately in love. The love was not reciprocated. This "completely upset what little reason there was in Governor Nicholson."<sup>18</sup> He demanded the lady in royal fashion from her parents, but neither she nor her parents nor members of the family were willing to comply. The governor became angry and persisted in his design and claim. He threatened the father and the brother and swore to Dr. Blair that if the girl married some other man, he would cut the throats of three men—the bridegroom, the minister, and the justice who issued the license.<sup>19</sup> The frenzied action of the governor was talked of not only in Virginia, but even in London. One of Nicholson's London friends wrote a letter of advice in which he asked him not to give the lady or her relations any further molestation and said: "It is not here as in some barbarous countries where the tender lady is dragged into the Sultan's arms just reeking in the blood of her nearest relatives."<sup>20</sup> The governor hated and abused every one whom he thought opposed him directly or indirectly in the love affair. He imagined that Archibald Blair, brother of the Commissary, was his rival, and hence "conceived the strongest objections to him and all his relatives." Whereupon he sent for Dr. Blair and said to him: "Sir, your brother is a villain and you have betrayed me." Then he lifted up his hands and loudly said: "Mr. Blair, take notice; I vow to the eternal G—that I will be revenged on you and all your family."<sup>21</sup> Blair did all he could to

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<sup>18</sup> Meade, p. 159.

<sup>19</sup> Perry, p. 102.

<sup>20</sup> Perry, pp. 66-75.

<sup>21</sup> William and Mary Historical Papers, Vol. i, p. 67.

undecieve and "pacify him" and to let him know that he was not opposing him in any way in his love affair. Still, however, he pursued the Commissary with malice and tried to ruin him in both England and Virginia. It was believed by President Blair and others that Nicholson even entertained designs on his life. Nicholson gave the college boys, pistols, powder and shot with which to keep the president out of the college.<sup>22</sup> Yet it cannot be said for certain that the governor intended to have boys go so far as to kill the president.

But the governor made a mistake which cost him his office in antagonizing the sober-minded and influential Commissary. Before his love trouble the governor did not wish the Council to oppose him in any way. Now Nicholson's actions were a great deal worse. Blair and five other members of the Council—Robert Carter, Philip Ludwell, J. Lightfoot, Matthew Page, and Benjamin Harrison—drew up a memorial against Governor Nicholson and sent it to the queen.<sup>23</sup> Soon after this, Dr. Blair and the Rev. James Fouace were requested to make affidavits relating to the mal-administration of Governor Nicholson. They did so. The charges brought in Blair's first affidavit pertained to the arbitrariness and partiality of the governor in his administration.<sup>24</sup> They charged Nicholson with appointing justices of the peace, sheriffs, militia and naval officers and other officers without consulting the Council; with removing clerks and judges from office without any complaints being brought against them; with acting directly contrary to the advice of the Council; with hectoring its members and calling them "the opprobrious names of rogue, rascal, cheat, dog, villain, and coward;" with using partiality in the general court; and with uncalled for action in strengthening the militia, and with

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<sup>22</sup> Perry, pp. 137, 138. William and Mary Historical Papers, Vol. i, p. 68. College papers.

<sup>23</sup> Perry, pp. 75-81.

<sup>24</sup> Perry, pp. 87-112.

using suspicious expressions as to how he could govern if he had "soldiers well-fleshed in blood and accustomed to booty."

The second and further affidavit of Blair against the governor pertained to the clergy, the college and himself.<sup>28</sup> The substance of the affidavit was that the governor invaded the Commissary's jurisdiction by calling meetings of the clergy without taking notice of the Commissary; acted disrespectfully toward, and spoke contemptuously of the clergy, saying "they were all a pack of scoundrels" and he wished they were dead; threw abuses on the college and acted without the direction of the trustees and hindered the revenues; and interfered with the private affairs of Blair and tried to ruin his reputation. The conduct of the governor which touched Dr. Blair the most was Nicholson's tyranny in the Council, his profane language and disrespectful talk about the clergy. The one aim of Blair's life was to raise the standard of the clergy in the estimation of the people, in order that they might do more religious good. Anything that hindered this aim touched the very soul of the Commissary.

Mr. Thrale, as agent of Nicholson, answered the charges brought against the governor. If they could have been refuted, Mr. Thrale failed to refute them. He begins by telling his Lordship that if his answers appear defective, that is leave the governor unjustified, he hopes the defect will be attributed to his ignorance in drawing them up and in nowise reflect upon the governor's cause. He attempts to answer but few of the accusations with plain facts. His replies, in general, are that the governor had a right to do so and so, and that he believed he was doing right in acting this way and that. No doubt the Council did object to the governor's acts sometimes when they had no strictly legal right. Mr. Thrale makes no attempt to answer many of the charges and even acknowledges of several that it is

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<sup>28</sup> Perry, pp. 131-138.



impossible to refute them. All of this dispute led to a general uproar in Church and State. Preachers and politicians took a part. The House of Burgesses passed a resolution in favor of the governor, saying they were of the opinion that he had great respect for the welfare and prosperity of the country." A great reception was given at the hotel in Williamsburg to which clergymen were invited in order that they might be brought over to the governor's cause." Some one of the time wrote a long poem "addressed to the Revd. Members of the Convocation Held at Man's Ordinary at Williamsburg," in which the ministers of the festival are satirized and depicted in unclerical hilarity. The first stanza of the poem is as follows:

" Bless us, what dismal times are these,  
What stars are in conjunction,  
What Priests turn Sycophants to please,  
And Hair brained Passion to appease,  
Dare Prostitute their Function." \*

A large number of ministers were in fact on the side of Governor Nicholson. Some of them were preachers with whom the Commissary was unpopular and whom the governor had won by taking their side against the vestries. Many of them were, perhaps unconsciously to themselves, won to the governor by his receptions, favors and flattering speeches. Those of the clergy who were on Nicholson's side signed a paper in his favor," but their influence could not save him. The proud governor was completely defeated by the sober-minded Commissary. When the charges and answers were examined in England, Governor Nicholson was removed and Edward Nott was made Lieutenant-Governor. The upright and philanthropic life of Blair in Virginia had won great respect for him in England, and when he said anything it carried weight with it. Nicholson is not the subject of this sketch, yet, in passing,

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\* New York Archives, Vol. ii.

\* Campbell's Virginia, p. 358. Meade, Vol. i, p. 159.

\* Perry, 179.

\* New York Archives, Vol. ii.

it may be said that in spite of his bad traits, there was a warm-heartedness and politeness about him, in his best hours, which attract the sympathy of the investigator.

In 1710, Alexander Spotswood became Governor of Virginia.<sup>22</sup> His was a nobler character than either of the other two mentioned. He was an old soldier. From his boyhood he was brought up in the army and served under the Duke of Marlborough. He was in the battle of Blenheim and was badly wounded by the first fire of the French.<sup>23</sup> He rose to the rank of colonel and hence had learned to command and expect obedience without gainsaying. This spirit he, of course, brought with him when he came to Virginia as governor. While liberal in some of his views, he was ardent for the royal power and for its transfer to the governor of Virginia. He made one of the best governors the colony ever had. For many years there was "perfect friendship" between him and Dr. Blair. He gave the college his support and at his instance the Assembly, in 1718, voted the college one thousand pounds.<sup>24</sup> He gave special encouragement to Indian education. On the other hand, President Blair supported Spotswood's favorite enterprise—the crossing of the Blue Ridge and discovering the valley beyond.<sup>25</sup> But after seven or eight years had passed disagreement began to rise between the two. The discord was due to two things: the rather extreme dominion exercised by the governor and the confused relations of Church and State. The spirit of freedom that always existed in a Virginia House of Burgesses was not exactly suited to the prerogative of a soldier governor.<sup>26</sup> A quarrel arose between Spotswood and the Burgesses. Colonel Byrd, with others, was sent over to England to prefer

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<sup>22</sup> Lord Orkney was still figurehead Governor.

<sup>23</sup> Spotswood's Letters, Vol. i, p. 9 (preface). Campbell's Virginia, pp. 378, 379.

<sup>24</sup> Spotswood's Letters, Vols. i and ii, p. 12 (preface).

<sup>25</sup> Meade, Vol. i, p. 160.

<sup>26</sup> Spotswood's Letters, Vol. i, pp. 132, 139; Vol. ii, pp. 219, 220.

charges against him, and because Dr. Blair would not take sides with him the governor tried to injure the Commissary. Again the governor appointed men, other than members of the Council, judges in the high court of Oyer and Terminer.<sup>26</sup> The Council opposed this, as well as other high-handed actions, and, led by Blair, drew up a remonstrance against the governor to the Lord Commissioner of Trade and Plantations, whereupon the governor besought the Commissioners to petition the queen to dismiss the whole Council and appoint another.

The other cause of Blair's opposition to Spotswood is found in the matter of inducting ministers. To the governor, as ordinary, belonged in ecclesiastical affairs, induction of ministers, probating wills and granting of licenses. No man was more anxious for preachers to be inducted than was the Commissary. The point in dispute was this: Spotswood claimed the right of inducting a minister into a parish as soon as the parish might become vacant, that is, as soon as it needed a preacher.<sup>27</sup> The Commissary claimed that it was the function of the vestrymen, in the name of the parishioners, to present a minister to the governor for induction, and in case the vestrymen should not present a candidate for the place in six months from the time the parish became vacant, then the governor could induct a preacher without presentation.<sup>28</sup> According to the practice of former governors, the opinion of Attorney-General North and the act of the General Assembly, the Commissary was right.<sup>29</sup>

To the convention of the clergy at Williamsburg in 1719, Governor Spotswood addressed a letter accusing the Commissary of not wanting ministers inducted, of deserting the cause of the Church, and of allowing laymen to conduct services in church and at burials.<sup>30</sup> Dr. Blair readily an-

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<sup>26</sup> Spotswood's Letters, Vol. ii, pp. 221, 223, 259, 260.

<sup>27</sup> Perry, pp. 97, 98, 203-208.

<sup>28</sup> Ibid., pp. 226-242.

<sup>29</sup> Ibid., pp. 127, 128, 243, 244.

<sup>30</sup> Ibid., 201-203.

swered these, for the first two were absolutely untrue. As to the third, a few times, when indisposed, Blair had allowed a layman to read for him and then preached and conducted the rest of the services. In distant parts of the colony he had a time or two ridden by a cemetery when some grave layman was conducting the burial service.\* These charges seem to us at the present time petty and trivial, but at that time when everything was done according to stern and rigid custom, they were regarded as of no little importance.

During the disagreement many letters were written by both parties to the Bishop of London. In 1721, Dr. Blair made a trip to England. The triumph of the old parson over the old soldier was complete. Spotswood was recalled in 1722 and Drysdale was made governor. The opposition between the Commissary and Spotswood had much to do with the removal of the governor.† In all of these conflicts between the governors and the Commissary one thing is most apparent, namely, the friction between the Church and State. These disturbances did not rise altogether from the fault of these individuals but from conceptions of government which had been inherited from Europe.

With Spotswood, Dr. Blair's troubles with governors passed away. Hardly, if ever, are the manly struggles of life suffered to be in vain. The old parson president saw the storm and the clouds, which darkened the morning of his life, pass away, and heavenly peace crowned his later years. For twenty years more the venerable Commissary toiled on for the religious, educational, and political good of the colony. Considering the many offices Dr. Blair held and his relations to others, it may be granted that he concerned himself at times a little too much with the affairs of others, though of this there is no evidence in the records.

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\* Perry, 226-233. Meade, Vol. i, pp. 160, 161.

† William and Mary Historical Papers, Vol. i, pp. 68, 69.

Earnestness, sincerity, and labor are the most noticeable things in his life from the time he landed in Virginia to the end of his career. His life was one of philanthropic service. It was ever above reproach. After having been a preacher for more than sixty-five years, Commissary fifty-four years, a member of the Council fifty years, and President of the College half a century, Dr. Blair died April 18, 1743, in his eighty-ninth year. He was buried at Jamestown. Having had no children, he left the residue of his estate, except some small legacies, to his nephew John Blair and his children. To the institution which he so long served he left his library and five hundred pounds.\*

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\* William and Mary Historical Papers, Vol. i, p. 69. Meade, Vol. i, p. 168.

## APPENDIX

The following is the inscription on Dr. Blair's tomb, as copied by Hugh Blair Grigsby in the middle of this century: "

" H. S. E. (Hic sepultus est)  
Vir Reverendus et Honorabilis  
Jacobus Blair, A. M.  
In Scotia natus,  
In Academia Edinburgensi nutritus,  
Primo Angliam deinde Virginiam  
venit:  
In qua parte tenarum  
Annos LVIII. Evangelii, Preconis  
LIV. Commissarii  
Gulielmi et Mariae Praesidis,  
Britanniae Principium  
Consiliarii  
Concilii Praesidis  
Coloniae Praefecti  
munera sustinuit  
oravit  
um oris venusti Decus,  
ate hilari sine (?) hospitali  
municipient  
issimo egenis largo  
omnibus comi  
superavit.  
Collegio bene diversam  
fundaverat  
eius Bibliothecam suam  
id alenda Theologiae studiorum  
Juventutem pauperiorem instituendam  
Testamento legavit  
Cal. Maii in die  
MDCCXLIII  
aetat: LXXXVIII  
am desideratissimi  
Lenis Laudem  
is nepotibus commendabunt  
pene mamore perenniora."

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" Meade, Vol. ii. Appendix, p. 486.

The following is a translation made by Mr. Grigsby with "the blanks and chasms" filled with his "own knowledge of the events of the Commissary's life": "

Here lies buried  
The Reverend and Honorable  
James Blair, A. M.,

who was born in Scotland, was educated in the College of Edinburgh, and emigrated to England, and thence to Virginia, in which colony he spent fifty-eight years as an Evangelist, Deacon, and Priest of the Church of England, and fifty-four years as Commissary of the Bishop of London. He was the founder and first President of William and Mary College, a member of the Council, and subsequently its President; and as such in the absence of the representative of the King, the Governor of the Colony.

He sustained his various offices with the approbation of his fellowmen, while he illustrated in his life those graces which adorn the Christian character.

He had a handsome person, and in the family circle blended cheerfulness with piety.

He was a generous friend to the poor, and was prompt in lending assistance to all who needed it.

He was a liberal benefactor of the College during his life; and at his death bequeathed to it his library, with the hope that his books, which were mostly religious, might lead the student to those things which lead to salvation.

He died on the — day of the Calends of May . . . in the year 1743, aged eighty-eight years, exhibiting to the last those graces which make old age lovely, and lamented by all, especially by his nephews, who have reared this stone to commemorate those virtues which will long survive the marble that records them."

"Mr. Grigsby stated that some words in his copy might not be correct as the inscriptions were much effaced.





GOVERNOR THOMAS H. HICKS  
OF MARYLAND  
AND THE CIVIL WAR



SERIES XIX

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History is past Politics and Politics are present History.—*Freeman*

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GOVERNOR THOMAS H. HICKS  
OF MARYLAND  
AND THE CIVIL WAR

By GEORGE L. P. RADCLIFFE

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## PREFACE

This work does not attempt to cover the history of Maryland during the early period of the Civil War; nor even to be a full account of the political agitation in the state at that time. I have endeavored simply to trace the course of Governor Hicks, but in doing so, have found it advisable to mention events which had no direct connection with him. A concise statement of these from time to time is necessary to show the setting in which Hicks was placed. Consequently, the importance of the topics discussed can by no means be measured by the respective degrees of fulness of treatment given to them. The data available for a study of the period are numerous; but they are generally so partisan and biased in character, and withal so contradictory, that attempts at drawing conclusions from them are, on the whole, hazardous. The course of events during this period may be traced with a fair amount of assurance, but the influences and the causes which are behind these are wrapt in much obscurity.

The sources which have been found most valuable are:

- I. Newspapers.
- II. Private correspondence; especially that of Hicks, including thousands of letters, papers, etc.
- III. "War of the Rebellion, Official Records of the Union and Confederate Armies." Moore's Rebellion Records are useful, especially for giving the views of the press during the period under discussion.
- IV. Official records in Annapolis, such as the Proceedings of the Executive and the Letter Book of the Executive.
- V. State publications; as the journals of the Legislature and the laws of Maryland.

VI. Many helpful suggestions have been received from those who lived at the time, and from other persons who have given the subject thought and study.

The work was undertaken at the suggestion of Dr. Bernard C. Steiner, whose advice has been very helpful.

In the great political struggle which immediately preceded the greater conflicts of open war and attempted disunion, three states, lying between the North and the South, slaveholding, yet allied in many interests with the free states, stood out with special prominence. These states were Kentucky, Virginia and Maryland. Kentucky, through her favorite son, the "Great Compromiser," had time and time again stood between the heated factions of slavery and anti-slavery. Upon the death of Clay, his mantle seemed to have fallen upon a Kentuckian, fully as earnest, perhaps not so talented. In Crittenden is seen the last of those great men who had devoted their life-long efforts to attempts to ward off what has been so often called "the irrepressible conflict."

Virginia, on account of her population and resources, would naturally prove a strong factor to either of the sides upon which she should cast her lot. Bound by the strongest of ties to a Union which she had been so instrumental in creating, Virginia at this time passed through a struggle which will long be memorable; a struggle in which the doctrines of devotion to the Union and devotion to state sovereignty sought the mastery. Even when hope was really gone, after the failure of the Peace Conference and of Congress to stay the tide of disunion, Virginia still lingered until the guns of Fort Sumter had sounded the death-knell of compromise and of peace.

The third state in this category absorbed attention throughout the country—not so much because of her population, which was comparatively small; not because of her wealth, which was not so considerable; nor was it because her representatives in public life were men of unusual



ability and prominence. Maryland was, however, supremely important from her geographical position. In case of the secession of Maryland, the seat of the Federal Government would be practically within her borders. Even if the District of Columbia should not revert to her, at any rate the capital would be enclosed in a foreign land. Maryland was essential to the United States Government for the reason also that through the state passed all the direct avenues of approach to Washington from the North. Says the greatest of the biographers of Lincoln: "Of more immediate and vital importance, however, than that of any border slave state, was the course of Maryland in the crisis."<sup>1</sup>

It is for these reasons that the course of events in this state was anxiously watched, and pressure of unusual degree brought to bear upon her from both northern and southern states. Consideration of these attempts and of Maryland's action at this crucial period in American history is certainly of general importance. During this period the figure which stood out in greatest prominence in Maryland is that of Thomas Holliday Hicks, not because of any brilliancy, for he was a man of very moderate amount of ability, but simply because as Governor of the state he took advantage of his position to follow a certain course which was momentous in its results. His persistent refusal to call the Legislature, in spite of constant agitation for the same during the six months which followed the election of Lincoln; and his struggle with the so-called "Rebel Legislature" after it had met in session, constitute a stirring chapter in Maryland history.

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<sup>1</sup> Nicolay and Hay: Abraham Lincoln, volume iv, p. 93.



# GOVERNOR THOMAS H. HICKS OF MARYLAND AND THE CIVIL WAR

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## CHAPTER I.

### EARLIER CAREER OF HICKS.

Thomas Holliday Hicks, the oldest of thirteen children, was born on September 2, 1798, in Dorchester county, Maryland. His early life was spent on a farm, with only slight opportunities offered him for obtaining a good education. Entering politics at the age of twenty-one, he was from this time on almost constantly in positions of public trust. He was elected sheriff of the county in 1824, and a few years later was a member of the state legislature. In 1836, he became a member of the state electoral college, was a member of the legislature again, and in 1837 served on the Governor's council. He was Register of Wills of Dorchester county during the years 1838-1851.

Hicks was opposed to the calling of a State Convention in 1850, but was afterwards chosen as one of the four to represent his county in the revision of the constitution. This convention met in the chamber of the House of Delegates in Annapolis on November 5, 1850. Considerable delay ensued before the convention organized and settled down to work,<sup>1</sup> much to the disgust of Hicks, who on January 13, 1851, introduced a resolution providing that sessions be held on three nights of every week to afford opportunities to members for making "fancy speeches and explanations."

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<sup>1</sup> Charles Chapman of Charles County was eventually chosen as permanent chairman.

On the whole Hicks took a fairly prominent part in the discussions which were held in the convention.<sup>2</sup> He was violently opposed to the election of judges by the people on the grounds that this method tended to diminish the independence of the judiciary. Some of the measures advocated by Hicks were quite radical. For instance, he desired that the convention should insert clauses forbidding, for a period of five years, any of its members from holding any office which was to be provided for by the proposed constitution.<sup>3</sup> He wanted also a provision adopted in the homestead laws by which if any man with a family should die leaving property and money in value less than five hundred dollars, the state should give this sum to his family. This motion was lost.<sup>4</sup>

On several occasions during the session of the convention, Hicks had offered resolutions providing for the possibility of a division of the state. On May 10, he moved "That it shall be the duty of the Legislature whenever a majority of the delegates from the Eastern Shore shall require it, to pass an act authorizing the qualified voters of the Eastern Shore of the state, at the next regular election thereafter, to determine for or against a withdrawal of that part of the State of Maryland, known as the Eastern Shore, from the Western Shore, for the purpose of uniting the same with the State of Delaware; provided such withdrawal and union be peaceable, mutual and in accordance with the authority of the United States."<sup>5</sup> Hicks in de-

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<sup>2</sup> No attempt will be made in this paper to consider the work of the convention as a whole, but only certain phases of it.

<sup>3</sup> Proceedings of Maryland State Convention of 1850-1, p. 539.

<sup>4</sup> Proceedings of Maryland State Convention of 1850-1, p. 352.

<sup>5</sup> Proceedings of Maryland State Convention, 1850-1, p. 747.

The last clause was not inserted in the previous resolutions bearing on the subject introduced by Hicks.

During the stormy days of 1860-1 the charge was brought frequently against Hicks that in 1851, he had advocated a secession measure in the convention of that year. The lack of foundation of this charge is very obvious. Hicks advocated the right of a por-

fense of his own motion stated that he did not desire a division of the state, but simply wanted the abstract right of separation formally stated.<sup>5</sup>

The motive which prompted Hicks to offer this resolution was the feeling which prevailed quite generally on the Eastern Shore, that it had been unjustly treated in being obliged to pay a proportional share of the large state debt which had been incurred by the state in fostering works of internal improvement. From these the Eastern Shore claimed to have received no benefits. Hicks vehemently demanded: "Are the people of the Eastern Shore to be retained as mere serfs, hewers of wood, and drawers of water for the city of Baltimore?" In fact, there was noticeable at this time that feeling of fear, which has so often found expression in Maryland history, that Baltimore<sup>7</sup> was planning to prey upon the rest of the state; and that if ever that city should acquire a controlling power in legislation, it would rule with an iron hand. The western part of the state was also thought to have been unduly fostered by money drawn from the state treasury.

The resolution of Hicks was defeated, though a majority of the votes cast by members from the Eastern Shore were in favor of it.<sup>8</sup> In the end, the convention opposed the undertaking of internal improvements by the state.<sup>9</sup>

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tion of a state to demand a separation from the remaining part. No question of withdrawing from the Government of the United States is involved.

<sup>5</sup> Debates of Constitutional Convention of 1850-1.

Hicks, a number of years later, declared in a speech in the United States Senate, that he had introduced the resolution, not to declare an "inherent right," but simply to give the people an opportunity to vote on the question.—*Congressional Globe*, 1862-3, volume iv, p. 545.

However from a consideration of the speeches Hicks made in the convention, it seems clear that his memory had failed him in the matter.

<sup>7</sup> Debates of Maryland Constitutional Convention, April 10, 1851.

<sup>8</sup> Vote of 27 to 46. Proceedings of Maryland Constitutional Convention, 1850-1, p. 747.

<sup>9</sup> Constitution of 1851, Article III, Section 22.

## CHAPTER II.

### HICKS BECOMES GOVERNOR OF MARYLAND.

On the formation of the American, or Know Nothing party, Hicks left the Whig party, then in a state of rapid decline, and became associated with the former.<sup>1</sup> By a provision of the Constitution of 1851, the Eastern Shore was entitled to the Governor to be elected in 1857.<sup>2</sup> The convention of the Know Nothing party met on July 23, and five candidates were placed in nomination.<sup>3</sup> Hicks, who had been one of the lowest men, received the strength of the Purnell party on the fifth ballot. On the seventh ballot he was only one vote short of a majority, whereupon a member changed his vote in Hicks' favor. The nomination was then made unanimous. That afternoon Hicks appeared before the convention, and in accepting the nomination, declared his abiding belief in the principle of "America for Americans only."

The campaign which followed was characterized by much excitement and employment of personal abuse. According to the returns, Hicks carried Baltimore by 9639, and the state as a whole by 8460. Claims of wholesale fraud were made, and certainly much illegality in the election occurred, though whether sufficient to have changed the result cannot be estimated satisfactorily. On January 13, 1858, Hicks delivered his inaugural address in the Senate

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<sup>1</sup> In early life Hicks was a democrat. Speech by him in United States Senate, Cong. Globe, 1863-4, volume iv, p. 2263.

<sup>2</sup> Article 11, Section V.

<sup>3</sup> Purnell of Worcester County; Hicks of Dorchester County; Cox of Talbot County; Sykes of Harford County; and Ricand of Kent County.

<sup>4</sup> Baltimore Sun, July 24, 1857; Baltimore American, July 24, 1857.

Chamber, and entered upon his duties as Governor of Maryland. On the whole, his speech embodied the tenets of the Know Nothing party. He spoke of a necessity of protecting the American workman; the granting of money by the state to sectarian schools was approved of only under certain conditions. He expressed a fear of the growing population of free negroes, and "Maryland's favorite scheme of colonization" of the blacks was advocated. In regard to the great question which was distracting the country, and which was soon to reach a solution by resort to war, Hicks declared that "Maryland is devoted to the Union and all of the states," and has "never listened to the suggestions of disunion from the Southern states, and has refused to join with the misguided people of the Northern states in their assaults on slavery."

The relations between Hicks and the Legislature of 1858 will not be dwelt upon here, as the subject has received ample treatment elsewhere.\* The Know Nothing party had reached the time of its decline, and in the elections of November, 1859, lost the Legislature to the Democrats.

The raid of John Brown in October, 1859, had revived more strongly than ever the fear of a negro insurrection; while the way in which Brown was regarded by many persons in the northern states served to intensify the bitterness of feeling which existed between the two great sections of the country. The Maryland Legislature, with a view of meeting any outbreaks among the negroes, and also of preventing radical abolitionists from fostering and assisting such uprisings, appropriated \$70,000 for the purchase by the Governor and the Adjutant General of arms and military accoutrements for distribution among local military companies throughout the state.

Almost as soon as the Legislature met, resolutions were

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\* Documents of the Senate of 1858, Document "B."

\* Know Nothing Party in Maryland, Dr. Frederick Schmeckebier.

passed which declared that any confederation with the Republicans in Congress by representatives from Maryland would be in direct opposition to the wishes of the people of the state. Subsequently Henry Winter Davis was censured for voting for Pennington, a Republican, for Speaker of the House of Representatives.

On February 10, the House of Delegates requested Hicks to submit to it a copy of the correspondence which had passed recently between Governor Gist of South Carolina and himself. The latter promptly complied. Gist had written to Hicks enclosing resolutions, unanimously passed by the South Carolina Legislature, which requested Maryland to send deputies to a convention of the slave states to consider measures for "concerted action." Hicks in reply deprecated any measures looking toward secession. Gist retorted that he had said nothing about secession. Nevertheless, Hicks attempted to show him that a logical interpretation of his letter certainly indicated an advocacy of disunion.<sup>7</sup> The correspondence between the governors, and the resolutions of the Legislature of South Carolina, together with the resolutions of the Legislature of Mississippi, which had accepted the invitation of South Carolina and had urged the slave states to send deputies to Atlanta on the first Monday in June,<sup>8</sup> were considered by a joint committee of the two houses of the Maryland Legislature. Resolutions were framed and adopted which expressed indignation at the methods pursued by the opponents of slavery, but at the same time stated a determination "to cling to the Union as long as its great principles can be preserved and the blessing for which it was intended can be secured, but our deep and solemn conviction that the Union must be torn in fragments unless equal rights to all sections of the country are sacredly preserved.

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<sup>7</sup> House Documents (Md.), 1860. Document T; Senate Documents (Md.), 1860, Document F.

<sup>8</sup> House Documents (Md.), 1860, Document GG.



We also respectfully but earnestly desire to assure our brethren of South Carolina, that should the hour ever arrive when the Union must be dissolved, Maryland will cast her lot with her sister states of the South and abide their fortune to the fullest extent." Thus the Maryland Legislature put itself upon record.\*

The year of 1860 would be notable in American history because of the political turmoil by which it is characterized, even if it did not mark the beginning of the struggle for disunion. The Democratic party was still strongly entrenched throughout the country. The Whig party had ceased to be a political factor, and its elements had been absorbed in the North and West mainly by the rapidly growing Republican party; while in the "Border and Southern states" the old spirit of compromise was represented by various parties, more or less local in extent and different in nature and aims, which may be classed roughly under the title of the Union or American parties. This element, considered as a factor in legislation, was hopelessly in the minority, but at times held the balance of power.

Plans to unite all the forces which were in opposition to the Democratic party were frequently considered, especially in the councils of the American party. The latter based its hopes upon the conservative elements in the Republican party gaining the mastery over the radical wing, which was represented by such men as Greeley and Chase, and which was strongly opposed to any compromise on the slavery question. The former faction was thought to be willing to sacrifice a part of the tenets of the party for the sake of forming a coalition against the Democrats. As stated above, Henry Winter Davis, an American, or Know Nothing in Congress from Maryland, voted for Pennington, a Republican, for Speaker of the House of

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\* House Documents (Md.), 1860, Document KK; Senate Documents (Md.), 1860—Document CC.

Representatives—an act which called forth a vote of censure from the Maryland Legislature in 1860. In doing so, Davis believed that the Republicans, in return for the assistance of the Americans in Congress, would be willing to support Bates or whoever should be the nominee of that party for President.<sup>10</sup>

However as time passed, the chances that the Republicans would support the candidate of the American party for the presidency constantly grew less, if it may be said that such chances ever existed.<sup>11</sup>

When the time for making nominations arrived, it was very clear that no coöperation would take place between the Republicans and the Americans. Bell and Everett were then selected by the latter as standard bearers on the platform of the "Constitution, the Union, and the enforcement of the laws." The hopelessness of carrying the election was apparent to the most enthusiastic of the Americans unless a bargain could be made if the election should be thrown to Congress. Bell himself only expressed hopes of carrying six states.<sup>12</sup>

In the campaign which followed, Hicks heartily supported Bell and Everett, and denounced the parties of both "Democracy and Abolitionism" as being "sectional and tending to a dissolution of the Union."<sup>13</sup> As Maryland had been the banner state of the American party in 1856, strong

<sup>10</sup> Letter of H. W. Davis to T. H. Hicks, written in February, 1859 (MS.).

<sup>11</sup> Lincoln said in a speech in Cincinnati in September, 1859, that putting a compromise man on the Republican ticket would not gain any slave state except possibly Maryland and would be disastrous to the party in the North.—Nicolay and Hay: Abraham Lincoln, volume 1, 592. Such ideas soon dominated the Republican party.

<sup>12</sup> Missouri, Tennessee, Kentucky, Maryland, North Carolina and Virginia. See letter of Bell to Hicks, June 2, 1860 (MS.).

<sup>13</sup> Letter of Hicks to Boston Clipper, May 25, 1860 (MS.).

It was reported that Hicks had supported Lincoln, but this statement he denies most strenuously in letters written both at this time and subsequently.

hopes were entertained of carrying the state again, though the party had lost the Legislature the year before, and very recently the municipal election in Baltimore.

The pro-slavery sentiment of the state was naturally inclined to favor the radical wing of the Democratic party, and to accept the advanced views enunciated by Maryland's gifted son, Roger B. Taney in the Dred Scott case. Consequently Douglas polled less than six thousand votes in the state. Lincoln did not receive half of this number. Baltimore furnished about a half of the entire Republican vote; Allegany county about one-fourth. The northern counties and those of the western part of the state furnished nearly all of the remainder. Several counties gave the Republican candidate only one vote, and two none at all. The campaign had been an exciting one, and resulted in the selection of Breckenridge electors by a small plurality.<sup>14</sup> The indefinable feeling of uneasiness and alarm which sprang up in the Southern states as a result of the election of Lincoln was very noticeable in Maryland. The accession to power of the "Black Republican Party" and the plans, according to rumor, of the "Abolitionists" were met by inflammatory utterances throughout the South. George William Brown, who though elected as a reform candidate in opposition to the Americans, yet had zealously supported Bell and Everett, subsequently spoke in his inaugural address, as Mayor of Baltimore, of this uneasiness, but insisted that the election of Lincoln presented no just cause for disruption. "The policy of Maryland," he said, "is to adhere to the Union."<sup>15</sup> Yet even before November 20, at least two of the newspapers of the state, the Centreville Advocate and the Patapsco Enterprise, had shown decided leanings toward secession.<sup>16</sup>

In the dissatisfaction which prevailed generally in Mary-

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<sup>14</sup> The Sun of November 24, 1860, gives as official: Breckenridge, 42,482; Bell, 41,760; Douglas, 5,966; Lincoln, 2,294.

<sup>15</sup> Baltimore American, November 13, 1860.

<sup>16</sup> Ibid., November 19, 1860.

land with the election of Lincoln, Hicks shared, and looked with gloomy forebodings upon the result of the elevation to power of that party which was so strongly anti-slavery. However, it is quite certain that he was not at this time in favor of the use of force to prevent Lincoln's inauguration, as has been frequently stated. The letter written by him to E. H. Webster on March 9, 1860, has been cited freely as damaging evidence. The letter is best regarded as an imprudent attempt at humor between a governor of a state and an intimate friend. Undoubtedly, the matter would never have come up for discussion if the opponents of Hicks, after the war had begun, had not seized this opportunity of trying to show inconsistency in his course."

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" Speech of Hicks in United States Senate on February 28, 1863, and correspondence between Hicks and Webster (MS.).

State of Maryland, Executive Chamber,  
Annapolis, November 9, 1860.

Hon. E. H. Webster.

My Dear Sir:—I have pleasure in acknowledging receipt of your favor introducing a very clever gentleman to my acquaintance (though a Democrat). I regret to say that we have at this time no arms on hand to distribute, but assure you at the earliest possible moment your company shall have arms; they have complied with all required of them on your part. We have some delay in consequence of contracts with Georgia and Alabama ahead of us, and we expect at an early date an additional supply, and of the first received your people shall be furnished. Will they be good men to send out to kill Lincoln and his men? If not, I suppose the arms would be better sent South. How does the late election sit with you? 'Tis too bad. Harford nothing to reproach herself for.

Your obedient servant,

THOMAS H. HICKS.

The letter was published frequently during the year after it was written.

### CHAPTER III.

#### PETITIONS URGING THE ASSEMBLING OF THE LEGISLATURE.

As soon as the people of the state had recovered somewhat from the uncertain feeling of bewilderment which followed the announcement of the result of the election, petitions began to pour in upon Hicks. Some of these urged a convening of the Legislature in special session; the others opposed any such course. By the former, no definite line or lines of policy seem to have been agreed upon as to what the Legislature should do after being assembled. In the main, however, a common desire was expressed that this body should take suitable steps to preserve peace in the state, and to guard the honor and welfare of Maryland if these should be imperiled. The people of Maryland by a vast majority were willing to unite with the states further South in protesting strenuously against the failures to execute the Fugitive Slave Laws. They saw in the election of Lincoln a blow which threatened not only the extension of slavery, but also the formal protection of that institution by the highest authorities in the land. The disunion movement in the South was anxiously watched, and a feverish desire prevailed that the state through its legal authorities should take some formal action in the crisis; preferably to make some attempt to stay the hand of disunion, but at the same time to secure from the incoming administration some guaranty for the protection of slavery—for at this time the secession of Maryland was desired by only a small portion of the inhabitants. A somewhat larger portion looked upon it as a final resort. The question of secession of the state was not considered, in the main, by the peti-

tions which were presented, nor indeed by the writings and speeches of the month following the election. Later, when the states in the South began to pass ordinances of this nature, the feeling that Maryland should break from the Union grew stronger.

On the 27th of November, a memorial signed by Ex-Governor Pratt, Sprigg Harwood, and other prominent citizens, was presented to Hicks, requesting him to summon the Legislature in special session immediately, in view of the gravity of the situation. On November 27 he replied, making his first public utterance on the subject. He contended that a session of the Legislature would only increase the excitement, then becoming too prevalent in Maryland. He expressed his entire sympathy with the South for the wrongs it claimed to endure, and his indignation at the refusal of the Northern people to enforce the provision of the Fugitive Slave laws. The Governor likewise made the very pointed suggestion that it would be better for the people to await the policy of the incoming administration before rushing to conclusions as to what would probably be done. He expressed his belief that in spite of the extreme views of some of the prominent Republicans, on the whole, the people of the North were too conservative to urge radical measures against slavery. The low condition of the finances of the state and the probable expenses of an extra session were dwelt upon. In this letter and in later utterances Hicks did not claim to follow the dictates of his own judgment alone, but insisted that the people of the state as a whole were opposed to the calling of the Legislature.<sup>1</sup>

From this time on mass-meetings and similar gatherings were held all over the state. A consideration of the accounts of these meetings does not lead to very satisfactory conclusions. Correspondents of Governor Hicks and

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<sup>1</sup> Letter to Pratt was published in the *Baltimore American*, November 29, 1860, and exists in manuscript.

of the newspapers show opinions so evidently biased, and make such contradictory statements, that attempts, even of a general nature, to form estimates of the numerical strength of the adherents of the different parties in the state are extremely hazardous. On the whole, the assertion may be made that at this period a large majority of these meetings adopted resolutions which expressed strong hopes of seeing Maryland remain in the Union, while it would seem that the larger number of them desired a session of the Legislature.<sup>3</sup> The resolutions adopted in the western part of the state abound in protestations of devotion to the Union. In the southern part of Maryland the resolutions passed are mainly taken up with a recital of wrongs which the South was said to endure. As an instance of the intense feeling in that section, a meeting which was held at Beantown, Charles county, requested all the Republicans who had voted for Lincoln to leave the county by January 1, 1861. No general exodus was necessary to gratify this "request," since the entire number of persons in the entire country who had incurred displeasure by their choice for President was only six.<sup>4</sup>

The Annapolis Gazette was generally believed to be the organ of Hicks, though the latter denied that any paper could claim its utterances to be possessed of any official sanction from him.<sup>4</sup> Still Hicks at times used this paper as his mouthpiece, and its columns were eagerly watched to detect some evidence that he was weakening in his determination not to call the Legislature together.

On December 5, 1860, Hicks wrote to Captain Contee, of Prince George's county, in reply to a letter in which

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<sup>3</sup> No absolute accuracy is claimed for this statement. Even if true, it proves but little, for at this time the opponents of the Legislature were not very active.

<sup>4</sup> Baltimore American, December 3, 1860; Baltimore Sun, November 24, 1860.

<sup>4</sup> Letter to Legrand from Hicks (MS.).

Contee, in view of the crisis which existed, had urged the necessity of all persons subordinating all party and sectional feelings to concerted efforts to save the Union. Hicks fully agreed with him and deprecated the attempts of "reckless and designing men to precipitate a dissolution of the Union before the people shall have had time for the reflection so imperatively demanded by the vast interests involved in the threatened separation, whether that separation be peaceful or bloody" etc.<sup>a</sup> In an address delivered at the Maryland Institute Building, on February 1, 1861, S. Teackle Wallis declared that this letter to Contee indicated the high water-mark of Hicks' secession doctrines. However, it cannot be said that Hicks actually advocated secession then, though he came quite close to doing so. In previous letters and public utterances upon the subject he had, it is true, intimated that a time might come when the South would not be able to submit if excessive insults were heaped upon her. Now Hicks took the stand that the South would not be justified in leaving the Union, even if the existing condition of affairs should be maintained much longer. But he still insisted that the entire question was far too serious to be decided on the spur of the moment, and without weighing long and carefully the grave consequences which would surely result from the taking of any radical step. In this letter Hicks expressed as strongly as ever his devotion to the Union and his intention to do what he could to prevent a separation of the states.<sup>b</sup>

The delegates who had represented Harford county in the Legislature during the preceding session wrote to E. G. Kilbourn, Speaker of that body, stating that if all the members of the Legislature resign, Hicks might be

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<sup>a</sup> Correspondence between Contee and Hicks exists in manuscript and also was published in the daily papers of the period. Hicks at the time requested permission from Contee to publish the correspondence.

<sup>b</sup> Baltimore Exchange, December 19, 1860.



induced to issue a call for a new election. Kilbourn replied that there was no reason to believe that Governor Hicks would take measures to bring about the election of a new Legislature. In Kilbourn's mind there existed serious objections to the leaving of the executive arm of the government to cope alone with the situation, and thereby allowing Governor Hicks further opportunities of misrepresenting, as he claimed, the will of the people. At any rate, it was not advisable in such perilous times, to have the Legislature out of existence, even for a short time; on the contrary, it should be ready at a moment's warning to take counsel for the public welfare. Meanwhile the efforts of those who disapproved of the convening of the Legislature, as being inexpedient and unnecessary, by no means ceased. Hicks was constantly in receipt of letters which sustained his course.

The situation in Maryland soon attracted attention in the country at large, and Hicks' policy of inaction was discussed widely by the press. Senator Crittenden, Ex-President Pierce, and President Buchanan<sup>7</sup> were among those who expressed their approval of the course followed by Hicks. Vice-President Breckenridge was quoted as having expressed views of the same nature. The influence that an endorsement of Hicks by Breckenridge would have had upon the people of Maryland was counteracted by a public letter from him in which he indignantly denied the statement attributed to him.<sup>8</sup> A correspondent in Rome, Italy, wrote Hicks that the press of England and France speak in "terms of the highest approval of your course."<sup>9</sup> The attitude of the newspapers in general of the Southern states in commenting upon Hicks may easily be surmised. During the winter of 1860-61, commissioners from three of

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<sup>7</sup> Rev. William Hamilton in a letter to Hicks, January 27, 1861 (MS.).

<sup>8</sup> Was written to the Baltimore Exchange and appeared in its columns on January 4, 1861.

<sup>9</sup> Letter of E. S. Courtney to Hicks, February 5, 1861 (MS.).

the Southern states waited upon him, to urge coöperation with them in founding a new confederacy.<sup>10</sup>

As Mississippi was on the eve of secession, Major A. H. Handy, a native of Maryland but for many years a citizen of Mississippi, was sent by the latter to urge Maryland to leave the Union without waiting for preconcerted action by the slave states; but in the meantime to come to some understanding with Mississippi as to a policy in the future. Hicks refused to see Handy officially on the plea that the Constitution of the United States forbade any "league," etc., between the various states without the consent of Congress. However, he had a long informal talk with him, and on the following day sent to him a written reply which was given to the public, and is therefore somewhat of the nature of a proclamation. The position taken by Hicks does not differ materially from the expression of his views in previous utterances. Sympathy for the South, devotion to the Union, inadvisability of hasty and violent measures, and the dangers to be incurred by Maryland as a "small border state" in case of war are the main ideas expressed.<sup>11</sup> Before he returned to Mississippi, Handy addressed a mass-meeting at the Maryland Institute Building, in which he declared that it was necessary that Maryland should leave the Union immediately. The crowd present, in the manner which is characteristic of such gatherings, expressed vigorously both approval and disapproval; while a "call for three cheers for Governor Hicks was responded to with a mingled chorus of cheers, groans and hisses."<sup>12</sup>

Hicks took no trouble to conceal his lack of confidence in the members of the Legislature. In the preceding session considerable friction had occurred between the Gov-

<sup>10</sup> Mississippi, Alabama and Georgia.

<sup>11</sup> The letter exists in manuscript and was published at the time.

<sup>12</sup> Baltimore American, December 20, 1861; Baltimore Exchange, December 20, 1861, etc.

Handy visited Somerset County before his return and made addresses there. Letter of J. A. Spence to Hicks (MS.).

ernor and the Assembly, which had been controlled in both houses by the Democrats. The position of Hicks was very galling to many of those who advocated a convening of the Legislature. They objected to his assertion that he alone, and not the duly elected representatives of the people, was competent and cool-headed enough to act discreetly and advisedly in such a crisis.

What would have been the course of the Legislature if it had been convened at the beginning of the year is, of course, a matter for speculation only. In those of the border slave states in which the legislatures were in session, the advocates and opponents of secession were represented by parties of almost equal strength, and definite action was seldom taken before protracted struggles had taken place. In Maryland very many of those who advocated a special session of the Legislature insisted that they did not want the state to secede, but simply desired an opportunity to attempt to act as mediator between the heated factions of both the North and the South; or at the farthest, to join with the Southern states in demanding guarantees that the incoming administration would require the repeal of the obnoxious features of the Personal Liberty laws and the enforcement of the provisions of the Fugitive Slave Laws. Hicks in reply referred to the fact that Speaker Kilbourn had heartily endorsed the resolutions of a mass-meeting which had asked for the secession of the state; besides other members of the Legislature had expressed views which favored disunion.<sup>22</sup> But it was said, granted that the Legislature would take steps looking towards secession, what right has Governor Hicks to thwart the expression of the will of the people as expressed through its chosen representatives? Hicks retorted that the people could not well express their convictions in the present crisis through legislators chosen eighteen months before the question at issue had really come up. The only way to obtain the

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<sup>22</sup> Proclamation to People of Maryland, January 3, 1861 (MS.).

wishes of the people, he held, was by a convention," but he insisted that the people were in an excited condition, and consequently not in a mood to give the matter the consideration due in view of the gravity of the questions involved. There was nothing to be gained by haste, but in a policy of prudent delay, Maryland's true welfare lay. Should she, after weighing well the consequences of breaking away from the Union, decide to sever ties hallowed by long associations, and should she care to imperil one of the most important of her domestic institutions, slavery, by depriving herself of the constitutional safeguards, weakly enforced though they were by the citizens of the North, should she care to bring, as it were, Canada to her borders, surely there was time for deliberation. Hicks scorned the suggestion that the Southern states would not be glad to welcome Maryland into a Southern confederacy at any time, in spite of some of the vehement remarks of some of the Southern leaders and the editorials of some of the newspapers, especially the *Charleston Mercury*, to the contrary. Before the inauguration of Lincoln, and even somewhat later, very few of those in Maryland who denied the right of secession, believed that coercion would be used to force a state to return to her allegiance to the Union. Hicks did not contemplate that forcible means would be adopted by the United States Government, but he had an idea that bloodshed would result before the division in the country was completed. From the horror of such a fate, he expressed a desire to preserve Maryland.

As the year 1860 drew to its close, excitement steadily increased and public meetings were more and more frequently called. One of the most important of these was held in Baltimore, at the Universalist Church, on Calvert street, on December 22. A committee was appointed

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<sup>14</sup> Hicks declared in his message to the Legislature on December 4, 1861, that he would have summoned a convention if he could have done so without convening the Legislature. See Document A, House Documents, 1861-2.

to await upon Hicks and to urge him to call the Legislature together immediately. Coleman Yellott, afterwards a radical supporter of the cause of the Confederacy in the Legislature of the following year, had stated in the meeting that he had just come from an interview with Governor Hicks, who had agreed with him on every point except that of the necessity of a session of the Legislature. Hicks had said that he had spent sleepless nights over the situation, and desired most earnestly to follow the voice of Maryland.

The committee found Hicks still unwilling to summon the Legislature. Hicks took the occasion to deny having endorsed Henry Winter Davis, and read to the committee the letter which he had written to Senator Crittenden, in which it was rumored Hicks had eulogized Davis. H. W. Davis was decidedly unpopular with the sympathizers of the disunion movement in the South, and indeed with the rank and file of the people generally in the state, because of his pronounced views in opposition to the usual interpretations of the doctrine of states rights, and because of his leanings towards the Republican party. A controversy<sup>18</sup> subsequently took place between Hicks and Legrand, the chairman of the committee which had awaited upon Hicks, as to how far the words of the former could be construed as an endorsement of Davis. Hicks then decided to make public the letter to Crittenden.<sup>19</sup> Hicks' language is not strictly an endorsement of Davis, but commends his "honesty and pluck." The substance of the letter is of the nature of an appeal to Crittenden to use all of his efforts to preserve the Union. Hicks is almost pathetic in the expression of his hopes that in some way this may be done.

On December 28, 1860, a meeting of a number of the members of the Senate of Maryland took place in Balti-

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<sup>18</sup> Papers bearing on this controversy are to be found in manuscript. The press of the day also contained accounts.

<sup>19</sup> The letter to Crittenden was published in the *Baltimore American*, January 8, 1861.

more by whom a memorial was drawn up and sent to Hicks requesting him to summon the Legislature. Eleven senators signed the petition and five wrote approving letters." Governor Hicks replied in a letter of January 5 to this request.<sup>17</sup> He sharply resented the action of the senators as an attempt to dictate to him his policy, and quoted the Declaration of Rights of Maryland and the Constitution of the state to prove that the Executive and Legislative departments of governments are entirely independent of each other; and claimed that the power of summoning in extra session the Legislature lay entirely in the hands of the Governor of the state. He offered, however, to consider the memorial as coming merely from citizens of the state. Alongside with this reply, he published a copy of a "Proclamation to the People of Maryland," dated January 3. Hicks had during the previous five weeks published letters which had set forth his views, but he had never made a formal statement to the public at large. The proclamation bears traces of careful preparation and consists of an exhaustive exposition of the arguments which Hicks had previously used against the advisability of convening the Legislature, supplemented by statements of other arguments which to Hicks seemed weighty. He condemned as strongly as ever the evasions of the Fugitive Slave Laws, and even declared that he hoped never to live in a state where slavery did not exist. He admitted the possibility of a division of the country, and the justness with which the South could demand this as a last resort. Yet he said that any attempt by the

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<sup>17</sup> One of the signers, Senator Goldsborough of Dorchester County, the home of Hicks, wrote on January 2, 1861, to the *Baltimore American*, stating that he believed that his constituents differed widely from him in the matter. Senator Kimmel of Frederick County was among those who refused to sign the memorial of the senators. He shortly afterwards wrote a letter enthusiastically praising Hicks and suggesting him as a candidate for the Vice-Presidency in the next election.—Letter of Kimmel to Representative J. M. Clayton, January 21, 1861 (MS.).

<sup>18</sup> *Baltimore American* January 7, 1861.

Southern states to break away, at that time, would be unjust and essentially non-effective. Apparently the ideas of secession and revolution were somewhat confused in his mind. The arguments he made use of were not those which are based upon ethics, questions of "inalienable rights" or of constitutionality, but upon the consideration of the probable effects of an attempt at secession upon the material welfare of the state. He closed with a touching appeal to be allowed to spend his few remaining days in the Union in which he had lived so long. The proclamation of Hicks, taken as a whole, is an exceedingly good presentation of the arguments in favor of a policy of inactivity, and as such received favorable comment throughout the North."

On January 10, a large meeting was held at the Maryland Institute Building. "Union" speeches were made by William Collins, Augustus C. Bradford, Reverdy Johnson, and others. The speech of Johnson was especially strong, and embodied a denial not only of the advisability of secession, but also of the constitutional right thereto.

On the same day a conference of prominent citizens of different political affiliations met and discussed various means to remedy the evils which were distracting the country. S. Teackle Wallis submitted the majority report which urged Hicks to summon the Legislature. In case he should refuse to do so, a committee was appointed which was to invite the people of Maryland to send dele-

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<sup>19</sup> Just before publishing the proclamation Hicks made a visit to the Eastern Shore and claims to have found a general endorsement of his course there. However feelings were running so high that he was threatened with personal violence on the streets of Cambridge by an angry opponent.—H. Thompson to Hicks, January 8, 1861 (MS.).

An enthusiastic correspondent in New York sent verses which he alleged were written by a "beautiful and talented lady" who fell into a poetic rhapsody on reading Hicks' proclamation. The document exists in manuscript and was widely published at the time.

gates to a state convention. The minority report was very long, and declared Maryland's true policy to be "masterly inactivity." It questioned the right of secession, and stated that if redress should be denied the South, that the Southern people would be justified in taking decisive action on the grounds of the right of revolution against tyranny. Indirectly, an approval was expressed of Hicks' course. The minority report was voted down on the plea that the conference had assembled only for consultation purposes, and not to set forward any definite principles.

The conference adjourned without passing either set of resolutions. On the following day it reassembled and passed the resolutions to the effect:

- I. Maryland is true to the American Union.
- II. Constitutional measures are sufficient to remedy the present crisis. The Crittenden compromise is favored.
- III. A committee to be appointed to urge the Governor to assign the last Monday in January as a day when the people of the state could decide whether or not a convention should be held. If the vote should be in the affirmative, the Governor then to be requested to appoint the second Monday in February as the day on which the people should select their delegates to the convention.

These resolutions were of the nature of a compromise. An attempt had been made to include in them a clause condemning any coercion of the seceding states. The conference, however, decided that it was best not to consider that matter. The opinions of the members of the conference, as far as expressed in the meetings, indicate a strong opposition to the use of coercion by the United States Government; while, at the same time, the belief was almost general that the Union should be preserved if that could be done with honor.\*

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\* The committee consisted of: R. B. Carmichael of Queen Anne County; W. T. Goldsborough of Dorchester County; Ross Winans of Baltimore City; A. B. Hagner of Anne Arundel County; A. B. Davis of Montgomery County.



Several interviews took place between the members of the committee and Hicks. However, nothing more favorable could be obtained from the latter than a promise to consider again seriously the question of calling the Legislature, if Congress should fail to pass measures which would bring reconciliation.<sup>21</sup> About the middle of January Hicks received from Governor Curtin, of Pennsylvania, a letter borne by the President of the State Senate and two other citizens. These commissioners congratulated Hicks upon the stand he had taken, and expressed a desire to come to some agreement with him as to a common course to be followed. Hicks declared that he could not receive them officially; nevertheless, he had a long interview with them. In the reply<sup>22</sup> sent to Curtin, he restated his determination to do all in his power to preserve the Union.<sup>23</sup>

On January 24 a letter appeared in a Baltimore paper, signed by Hicks and purporting to be written in reply to a communication from the Governor of Alabama, which was brought by Hon. J. L. M. Curry, who, as commissioner, had been empowered to treat with Maryland with a view to forming a "mutual league" for the protection of the rights of the Southern states.<sup>24</sup>

This letter in reply to Curry attracted considerable attention, as it was claimed by some persons that in it, Hicks went back upon his previous utterances. S. Teackle Wallis in a speech on February 1, 1861, in which he

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<sup>21</sup> See accounts in *Baltimore Sun*, *Baltimore American*, *Baltimore Exchange*, etc. Also, in manuscript, from Hicks to Carmichael, January 15, 1861; to Hicks from Carmichael, January 15, 1861; *Ibid.*, January 16, 1861; from Hicks to Dr. Jas. J. Duvall, etc.

<sup>22</sup> Hicks was strongly advised at this time by some of his friends not to appear to be on very intimate terms with Curtin, since such an action on his part would be construed as a form of an alliance with the "Black Republicans"; and thereby the strength of the conservative Union men in Maryland would be weakened seriously.—Letter of William Price to Hicks, January 16, 1861 (MS.).

<sup>23</sup> *Baltimore American*.

<sup>24</sup> Letter now exists in manuscript.

eloquently and bitterly arraigned Hicks for duplicity, claimed to trace a pronounced advocacy of secession through the previous letters and proclamation of the governor, but declared that in the reply to Mr. Curry, Hicks took an entirely different stand. This charge is not entirely justified. Hicks had practically admitted the abstract right of secession, but had never advocated an immediate assertion of that right. He had said that circumstances did not justify disunion, though unless the Northern people should redress the wrongs of the South, he would favor a separation from the Union. He did contradict himself in this respect in that he now declared that Maryland would be unwilling to leave the Union for *any* cause (the italics are his).

He held that secession would soon bring on a war, which would mean ruin to Maryland; and rather than that the state should seek a separation from the Union, she would have her rights enforced under the Constitution of the United States. The argument advanced that secession, even if peaceful, by bringing a hostile country to her northern boundaries, would mean the gradual though absolute downfall of slavery in the state, was undoubtedly sound.

Hicks in this letter did not really consider the right of secession. He merely declared that every state in the Union was prohibited under the Constitution of the United States to enter into "any league" with other states, but he was silent as to whether the Union itself which existed between the states could be broken. On the whole, the tone of the letter shows that Hicks was drifting slowly towards the position of unconditional adherence to the Union. Besides the overtures of the commissioners who came personally from Mississippi, Alabama and Pennsylvania,<sup>28</sup> Governor Hicks was constantly in receipt of communications of various natures from the governors, legis-

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<sup>28</sup> A commissioner from Georgia came later.

latures, or conventions of other states. Those from the Northern states commended his policy; those from the Southern states either urged upon Hicks the necessity of some form of coöperation among the slave states, or gave notice that acts of secession had been passed.<sup>28</sup> The governor of Mississippi deemed the matter to be so urgent that he telegraphed to Governor Hicks an announcement of the withdrawal of Mississippi from the Union—an act which called forth a forcible though somewhat rash comment from Hicks.<sup>29</sup>

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<sup>28</sup> Among the states referred to are: Indiana, Tennessee, Georgia, Louisiana, Texas.

<sup>29</sup> Hicks wrote on the envelope in which the telegram came: "Mississippi has seceded and gone to the devil." (MS.).

## CHAPTER IV.

### THE SPIRIT OF COMPROMISE.

Though Hicks had steadily declined to enter into any "league or mutual understanding" with the commissioners sent from the several states, yet he desired some manner of coöperation among the border slave states which would have for its object, the bringing about of a compromise between the parties of the North and South. With this in view, a correspondence was entered into with the governors of Virginia, Tennessee, Kentucky and Missouri.<sup>1</sup> It is not clear what Hicks had in mind, and how far the policy desired by himself differed from the plans which the commissioners from Mississippi and Alabama had advocated. From a consideration of the limited data available, it seems that he reckoned that the border slave states, acting as a unit,<sup>2</sup> could hold the balance of power between the North and the South; and that these states would naturally be inclined to moderation and compromise, since they had felt most severely the injuries complained of by the "Cotton states"; while at the same time, they realized the dangers likely to result from a breaking up of the Union. The opponents of Hicks severely criticised him for this move and declared that he had not the right to pledge Maryland in any way whatever to any line of policy without first consulting the Legislature.<sup>3</sup>

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<sup>1</sup> This correspondence was referred to in his letters to Pratt, Handy, Proclamation of January 3, and in fact in nearly all of Hicks' public utterances at this time.

<sup>2</sup> This idea is but an outgrowth of the plans so strenuously urged by the followers of Clay and Crittenden; and in another form constituted the platform of the Constitutional Union party in 1860.

<sup>3</sup> See editorial in Baltimore Exchange on January 28, etc.

The policy urged by Hicks—though it cannot by any means be said to have been original with him—was not without its merits; and if put into operation, might have prevented hostilities had it not been that the day for compromises had passed and the “irrepressible conflict” had indeed begun.

Yet this movement for consultation was not entirely without fruit. Virginia took the lead on January 19, 1861, by the issuance of an invitation to all the states in the Union to send commissioners to a conference which was to meet in Washington on February 4, 1861. Likewise Virginia sent commissioners to the President of the United States and to the different seceded states asking that all parties abstain from any “acts tending to produce a collision of arms pending the efforts of conference to secure a basis of compromise.”<sup>4</sup>

The right of Hicks without the sanction of the Legislature to appoint delegates from Maryland to represent the state was strenuously denied by his political opponents,<sup>5</sup> and questioned by some of his closest<sup>6</sup> friends.<sup>7</sup>

Acting upon the advice of Reverdy Johnson,<sup>8</sup> Hicks replied to Governor Letcher of Virginia accepting the invitation to send delegates.<sup>9</sup> The following men represented Maryland: John T. Dent, Reverdy Johnson, John W. Crisfield, Augustus C. Bradford, William T. Goldsborough, J. Dixon Roman and Benjamin C. Howard.<sup>10</sup> The delegation was an able one and consisted of “strong

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<sup>4</sup> Crittenden; Debates of Conference, Convention of 1861, p. 9.

<sup>5</sup> Baltimore Exchange, January 28, 1861, etc. Resolution of mass-meeting in Baltimore City, February 1, 1861.

<sup>6</sup> Letter to Hicks from E. H. Webster, January 23, 1861 (MS.).

<sup>7</sup> In seven states, New Hampshire, Vermont, Connecticut, Maryland, North Carolina, Indiana and Kansas, commissioners were appointed by the governors of the respective states.

<sup>8</sup> Letter from Hicks to R. Johnson, January 23, 1861 (MS.).

<sup>9</sup> Baltimore American, January 29, 1861.

<sup>10</sup> Howard was added a little subsequently upon the suggestion of R. Johnson. Letter of Johnson to Hicks (MS.).

Union" men, though not all were of the same political party. On the fourth of February, 1861, the conference met in Willard's Hall, in the city of Washington, and immediately chose the venerable John Tyler as President. Eventually twenty-one states were represented, including all of the Southern states which had not passed ordinances of secession and the free states except some of those of the extreme northwest. The fourteen free states easily held control, since the balloting was taken by states, each of which had one vote.

The Peace Conference may be looked upon as the last struggle of the compromisers. In the "Border States," especially, almost all factions seemed to have acted together, though for the last time, to make a gigantic struggle for Union. The Conference contained many distinguished men, and from the conciliatory attitudes which were assumed at first, strong hopes were entertained that much good would result from the meeting.<sup>21</sup> Maryland was represented on the Committee on Resolutions by Reverdy Johnson, who was probably the ablest scholar at the bar in the state.<sup>22</sup>

As might be expected, the representatives from the border slave states were the most active; but even in their ranks, differences of such a radical nature appeared that the chances of an agreement satisfactory to the majority, in even a limited degree, seemed to become more and more remote. The proceedings dragged along, and much time was taken up by the members in making recriminations and in attempts at fixing the responsibility for the unfortunate plight of the country upon the various factions and parties throughout the land. Of course it was understood that the Peace Conference had no power to legislate for

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<sup>21</sup> Chittenden, a member of the conference from Vermont, wrote up the account of the proceedings from the notes which he took, and is the chief authority on the subject.

<sup>22</sup> Crisfield was on the Committee on Rules; Howard was temporary Secretary.

the country, but it was thought that the measures there agreed upon would be considered by Congress as especially weighty and worthy of adoption. Perhaps it may be added as an additional motive for holding the convention the partiality of the American people for employing conventions instead of the customary regular legislative bodies in the settlement of grave questions.

Hicks, as has been stated, had long formed plans of consultation among the states, and now labored to secure the success of the Conference. He paid a visit to the body while in session and was received with much cordiality by the members.<sup>13</sup> Lincoln shortly before had sent for Hicks to consult with him in regard to the Maryland appointments; and, in the interviews which took place, Hicks took advantage of the opportunity to urge upon Lincoln that the latter use his influence upon the Republican leaders to secure a modification of their demands for the sake of effecting a compromise.<sup>14</sup>

Roughly speaking, public opinion in Maryland at this time may be said to have been represented by the policy pursued by the delegates from the state in the Peace Conference. These with equal vehemence denounced both secession and coercion. Crisfield, Johnson and Howard even denied the right of secession, but declared as inalienable by an oppressed people, that of revolution. Maryland also refused to admit that the Union was indivisible. Towards the end of the session, Reverdy Johnson introduced a resolution which expressed regret at the action of those states which advocated secession, yet did not pass judgment upon the legality of their course or the nature of their motives. Attempts at secession were "deprecated."<sup>15</sup> The conference by a vote of nine to twelve refused to table

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<sup>13</sup> Baltimore American, March 2, 1861.

<sup>14</sup> It was stated at the time that Lincoln offered Hicks a seat in the cabinet which he declined. No satisfactory data on the subject have been found.

<sup>15</sup> Chittenden: *Debates of Peace Conference*, p. 449.

resolutions which denied the right of secession. Ohio and New Jersey voted with the slave states on four of the motions." On February 27 the Conference agreed upon the Guthrie Report, which followed substantially the Crittenden Compromise measure. Some of the provisions of the report were adopted only by close votes. In the main the chief opposition came from the most northerly of the states, though Virginia, the promoter of the Conference, almost steadily opposed the measures of compromise which were adopted.

The bickering spirit which was so noticeable in the debates, and the approaching inauguration of Lincoln, caused public interest in the Conference to flag; and its resolutions and the conclusion of the session passed largely unnoticed by the people. Indeed, the widely discordant elements present would have prevented the Conference from having much weight, even if the times had been open to such results." Meanwhile on February 1 a large mass-meeting had been held at the Maryland Institute Building, in which resolutions denouncing the course of Hicks in appointing delegates to the Peace Conference as a "flagrant and unconstitutional usurpation of power" had been adopted amid great applause. The resolutions also recommended that the people of Baltimore should vote in primaries on February 5 to select delegates for a convention which was to meet in the "Law Building" on February 7, which body was to choose representatives to a state convention to be held on the 18th of the same month. The counties were also recommended to hold primaries on February 12, and county conventions on the 14th for the same purpose.

This call for a convention was of course without any authority. It had been adopted by those who were in despair of prevailing upon Hicks either to summon the Legislature, or to call a convention. The ground was

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"Ibid., p. 447. "Nicolay and Hay: Lincoln, volume iii, 231-2



taken that unconstitutional measures were the best that could be adopted under the circumstances. Hopes had been expressed by some of the speakers that the Union might still be preserved, and the Peace Conference about to assemble was looked upon as a means of accomplishing this end. However, one speaker had gone so far as to say that the Union was already a thing of the past, and therefore it behooved the people of Maryland to make arrangements for their position in the future. Throughout the proceedings of the meeting Hicks had been denounced on all sides. Henry May declared that the implied meaning of the course of Hicks was that the people of Maryland were not capable of being entrusted with a serious duty. He added in a letter several days later: "His [Hicks'] conduct is that of an oppressor; and if the people of Maryland longer submit to it, they are, in my humble opinion, only fit to be oppressed." S. T. Wallis was of the opinion that the very reason that Hicks was unwilling to trust the Legislature was sufficient reason why the people of Maryland should have confidence in that body." The course of Hicks was said by him to have been filled with inconsistencies from beginning to end. Another speaker was of the opinion that the most effective and expeditious way of ending the controversy was to gibbet Hicks."

Considerable excitement occurred in the primary elections in the state. In a few cases the counties did not make any selections for members of the convention. Dorchester county, the home of Hicks, sent "Union" delegates, but these were instructed to urge that redress should be given to the South.

The State Conference Convention met on February 18, the various parts of the state being on the whole represented. Judge Ezekiel Chambers on taking the chair stated that he had heard that Hicks was considering very favorably

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" Letter of May to President of Baltimore Convention; Baltimore Exchange, February 9, 1861.

" Baltimore Exchange, February 4, 1861.

" Baltimore American, February 2, 1861.

the proposition to summon a convention, and therefore it was best to wait the action of a body legally chosen. Therefore the Conference decided to adjourn until March 12, unless in the meantime Virginia should pass an ordinance of secession; in which case, Chambers was instructed to reconvene the Conference as soon as possible.

The evidence in the matter would seem to indicate that Hicks was weakening in his stand that a session of the Legislature, or a sovereign convention, was neither necessary nor advisable. In a letter written on February 9, he distinctly states that if Congress through the "Committee of Thirty-three"<sup>21</sup> had not been considering plans which aimed at the restoration of harmony and the preservation of the Union, he, long before, would have called a convention.<sup>22</sup> The Conference Convention reassembled on the day appointed, March 12. Stormy sessions took place on that day and on the one following, and little of importance was done. Resolutions of various kinds were read, one set declaring that any attempt by the United States Government to retake any forts seized by the Confederacy would in itself be an entire dissolution of the compact of the Constitution. In the end, compromise measures prevailed, and the convention simply provided for the sending of delegates to Virginia, and decided to wait the action of that state in regard to secession. President Chambers was given the right to summon the Convention whenever he should deem it advisable.<sup>23</sup> The convention was never reassembled. On the outbreak of hostilities, Chambers issued a call for an assembling; but on the appearance of the proclamation of Hicks calling a special session of the Legislature, Chambers countermanded his previous order, declaring that the mission of the Conference was ended.<sup>24</sup>

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<sup>21</sup> Henry Winter Davis represented Maryland on the "Committee of Thirty-three."

<sup>22</sup> Letter to Dr. Joseph J. Duval (MS.).

<sup>23</sup> Baltimore Sun, March 13 and 14, 1861; Baltimore Exchange, March 13 and 14, 1861; Baltimore American, March 13 and 14, 1861, etc.

<sup>24</sup> Baltimore Sun, April 25, 1861.

## CHAPTER V.

### RUMORS OF PLOTS AGAINST LINCOLN.

The belief existed in the minds of many persons that violent measures would be taken to prevent the inauguration of Lincoln. As far back as January, 1861, Governor Olden of New Jersey wrote to Hicks almost imploring him not to yield to the demands of the "secessionists," and expressed his belief that it "is the opinion of many that the peaceful inauguration of Mr. Lincoln depends on the firmness of your excellency."<sup>1</sup> A lady informed Hicks that a Southern sympathizer had told her that he knew of three thousand men in Maryland who had sworn to prevent by force, if necessary, the inauguration of Lincoln.<sup>2</sup> Hicks himself had stated in his proclamation of January 3, 1861: "But my fellow-citizens, it is my duty to tell you that the reassembling of the legislature is wished for by many who urge it with a view to no such specification [acting as mediator between North and South, etc.]. I have been repeatedly warned by persons having the opportunity to know, and who are entitled to the highest confidence, that the secession leaders in Washington have resolved that the border states, and especially Maryland, shall be precipitated into secession with the Cotton States before the 4th of March. They have resolved to seize the Federal Capital and the public archives, so that they may be in a position to be acknowledged by foreign governments as the United States, and the assent of Maryland is necessary, as the District of Columbia would revert to her in case of a dissolution of the

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<sup>1</sup> Letter of Governor Olden to Hicks (MS.).

<sup>2</sup> Mrs. Alma Phelps in a letter, January 14, 1861 (MS.).

Union, It is only contemplated to retain it for a few years; as the wants' of the southern military confederacy will cause its removal further South. The plan contemplates forcible opposition to Mr. Lincoln's inauguration, and consequently civil war upon Maryland soil, and a transfer of its horrors from the states which are to provoke it." On January 25, Hicks wrote to General Scott asking if two thousand arms could be had from the United States government to "meet an emergency if it shall arise"; and then he proceeded to speak of the dangers which he said were threatening Washington.<sup>a</sup>

As time went on Hicks became more and more convinced that plots were in actual existence. A letter received by him was deemed of such importance that it was sent to the commanding officer at the Naval Academy; though before this was done, he tore off the signature. Marshal George Kane of the Baltimore Police saw the letter and wrote to Hicks for the name of the correspondent.<sup>b</sup> Hicks replied that he dare not give the name since publicity would close up his means of obtaining information in the future from that source.<sup>c</sup> Kane replied insisting that the head of the police and detective departments was in a better position to ferret out the alleged conspirators than was even the Governor himself. But Hicks again refused to give the name of his correspondent.<sup>d</sup>

No one seemed able to give definite information of any plot, though the opinion was frequently expressed that there must be some truth behind the rumors which were current. Threats of violence were made by individuals, and but little more was needed in the excited condition of the public mind to create the impression that a well-organized plot existed. Sensational articles continually

<sup>a</sup> Letter was not made public. It was found in Letter Book of the Executive.

<sup>b</sup> Ibid.

<sup>c</sup> Ibid.

<sup>d</sup> Baltimore Exchange, February 25, 1861.

appeared in the newspapers, describing, at times with great minuteness, plans to capture the capital, and to prevent thereby the inauguration of Lincoln from taking place. Scott took alarm and increased the number of soldiers in Washington.

On January 26, the House of Representatives by a resolution provided for a committee to investigate whether "any secret organization hostile to the government of the United States existed."<sup>1</sup> In a few days the committee selected for the purpose began to examine witnesses. The evidence which came in was very meagre and contradictory. For instance it was shown that certain political clubs such as the "National Volunteers" had begun to drill and effect a military organization with the purpose of preventing the "Wide awakes" from carrying out their threats, as rumored, to escort Lincoln to Washington and by force of arms to overawe the extreme sympathizers of the Confederacy. However, it seems that no plans against the capital were contemplated unless Maryland and Virginia should secede—and possibly not even then. Ex-Governor Enoch Louis Lowe of Maryland in his testimony denounced Hicks as being responsible for many of the wild rumors then in circulation. Hicks was then requested by the committee to appear whenever he should find it convenient, and testify, in view of the fact that he possessed, apparently, knowledge of a valuable character. Hicks replied that his time was so taken up that he feared that he could not comply with the request. The committee insisted, while Hicks protested that he could do nothing more than to repeat what he had before given to the public. If the committee saw proper, he asked that some one should come to Annapolis to take his testimony. Finally on February 13, Hicks appeared in Washington before the committee. The chairman expressed a desire that Hicks would be as explicit as in his discretion seemed

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<sup>1</sup> Report of Committees of Congress, 1860-1, volume ii.

suitable in view of his position as chief executive of a state. His testimony however really added little to what was already known, owing to the lack of definiteness in his statements, which he explained as necessary since publicity would prevent further opportunities of acquiring information. In closing, Hicks stated that though he had every reason to believe that these plots once existed, he now thought the danger had passed away. Hicks was very bitterly criticised for his course in this matter. His opponents claimed that he had created an excitement unduly, had made charges that he could not prove, and had thereby caused reflections to be cast upon the good name of the people of Maryland.\*

Certainly from the evidence which he gave in, it seems doubtful whether he was justified in expressing himself so decidedly as he did in the proclamation of January 3, and on subsequent occasions; though he may have believed that these reputed plots did exist. Probably the actual facts in the matter will never be known. It seems that Hicks was alarmed by schemes, which if they existed at all, never passed out of the nebulous state, though much wild talk was rife.

Nevertheless the press in some sections of the country was still filled with lurid accounts of conspiracies existing in Maryland, and in and around Washington. The plans of the supposed conspirators continued to be delineated with a surprising wealth of detail. Feeling was very strong in opposition to the introduction into power of the Republican party, but no satisfactory evidence has ever been obtained to show that any designs were entertained in Baltimore upon the life of Lincoln—at any rate by any

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\* "The mare's nest over which Governor Hicks had so long brooded has proved to be an unprolific speculation. Notwithstanding the proud cackle with which he announced its discovery, and his patient incubation for many weeks, his labor has been altogether barren of results."—Baltimore Exchange, February 16, 1861.

organization having that purpose in view. The public appearance of Lincoln in Baltimore might have given an occasion to an outbreak of mob violence, foreshadowing in a way the terrible events of April 19, but it is needless to add that such an action would have been condemned by the bitterest opponents of Lincoln. It is true Lincoln was disliked in Maryland as being the representative of the hated Republican party; but the feeling uppermost toward him in the public mind in Maryland was hardly to be distinguished from a form of contempt, which had been brought on by what was considered the somewhat trifling and undignified position which he had assumed while slowly making his way to the East.

It was stated that Hicks had supplied the information which had caused a change in the plans of the presidential party, but this Hicks indignantly denied, and declared his belief that no dangers whatever threatened Lincoln in Baltimore.\* The whole episode may be regarded as a natural result of the prevailing excitement, and of the ease and rapidity with which, in such times, the expression of an opinion comes to be considered as a statement of fact. A biography of Lincoln states that the latter "felt that there was no evidence before him that the official authority of the city would be exercised to restrain the unruly elements which on such occasions densely pack the streets of Baltimore."<sup>10</sup> The question arises whether Lincoln was justified since he "had no evidence before him" in assuming that the authorities of the city would not endeavor to preserve order. In any well-organized form of government, presumption is that the authorities will do their obvious duty, unless proof to the contrary exists. No such evidence was then available, nor has it been so since then. The justification for Lincoln's course may perhaps be seen in the fear that some fanatic might com-

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\* Baltimore American, February 27, 1861.

<sup>10</sup> Nicolay and Hay: Abraham Lincoln, volume iii, pp. 308-309.

mit an act of violence before the police could have prevented this—but not on the grounds that the municipal authorities would have been wilfully negligent in their duties.

The month of March, 1861, has often been compared to the moments of calm which come just before the storm. The analogy is truly applicable to the condition in Maryland at that time; the records of the month showing little, comparatively, of importance. To the people of the state, the period was one of anxiety and gloomy forebodings. The country appeared hopelessly rent asunder, leaving Maryland in a Union to which she was bound by strong bonds of reverence and affection, yet torn aloof from that section of the country to which she was naturally attached by the similarity of institutions. Advocates of peace found little of comfort in Lincoln's silence and the preparations for war busily going on in the Confederate States. Mass-meetings continued to be held which either commended Hicks, or roundly denounced him according to the opinions of the constituents of the various gatherings. The language employed was more pronounced in tone, and indicated more intense feeling than hitherto, but this was offset by the fact that there was even less of directness and definiteness than there had been in the plans previously brought forward. As an instance of this, the State Convention which assembled on March 12, for the second time, offered no means of solution of the problem, nor did it advocate any distinct policy, but simply decided to wait the first positive movement in the political situation.

Hicks was in Washington on the first of the month, where he had gone to urge the adoption of the resolutions of the Peace Conference; and while there, had two interviews with Lincoln. It was stated that the latter sought his views as to the respective merits of Henry Winter Davis and Montgomery Blair for a seat in the cabinet. According to the reports, Hicks declared that Davis was



obnoxious to the people of Maryland, while the appointment of Blair would be regarded by them as a direct insult.<sup>11</sup> Hicks subsequently denied most strenuously that he had recommended any one to Lincoln for appointment, or that he would do so in the future unless his opinions were sought for by the President; also that he was not, nor would he ever be an applicant for office under the administration.<sup>12</sup>

On the question as to the advisability of calling for an expression of opinion by the people of the state in regard to the future policy of Maryland, Hicks' views were unchanged. He declared that the passage of the proposed constitutional amendment by Congress had in a large measure stripped the problem of many of its perplexities, and had shown the wisdom of Maryland's policy of inaction. Hicks after having weakened, apparently, in his position during February, had now come out more positively than ever in opposition to all measures which in any way looked towards disunion.

The last of the commissioners from the Southern States, A. R. Wright of Georgia, who had visited Hicks to urge upon him the necessity of Maryland's "withdrawal from the Union" had met with much less encouragement. Hicks now practically denied the right of secession. He declared that the people of Maryland recognize the right of revolution when tyranny becomes oppression, but this was not the condition at the time. Moreover he asserted that the American system of rotation in office prevents tyranny from becoming firmly seated.<sup>13</sup>

On the 18th of the month, Hicks took a much more advanced position towards the Federal Administration by

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<sup>11</sup> Baltimore American, March 2, 1861.

<sup>12</sup> Letter from Hicks to William Price. See Baltimore American, March 19, 1861.

<sup>13</sup> Apparently the reply to Wright was not given to the newspapers nor to the public in any manner. It is to be found in the Letter Book of the Executive.

applying to General Scott for arms and soldiers if these "should become necessary to put down rebellion in this state."<sup>44</sup> Hicks feared that the passage of an act of secession by Virginia would cause an outbreak in Maryland. Scott approved of the request, and Cameron notified Hicks that assistance would be furnished him whenever he should deem it necessary.<sup>45</sup> The correspondence was not made public at the time. Indeed, there is little doubt but that there would have been a popular outcry if it had been known that Hicks was seeking the services of United States soldiers to keep order in Maryland.

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<sup>44</sup> Letter Book of the Executive.

<sup>45</sup> War of Rebellion, series i, volume ii, part i, p. 317-8.

## CHAPTER VI.

### OUTBREAK OF HOSTILITIES.

From this condition of lethargy, Maryland was suddenly aroused by the attack on Fort Sumter. The call for seventy-five thousand volunteers by Lincoln on April 15, spread consternation in Maryland even among the "Union" men. The cherished hope of neutrality in the struggle, or at least of simple adherence to the Union, was rendered impossible by the call upon Maryland for four regiments of infantry. The state was expected not only to remain in the United States, but also to assist in the use of force to bring back the states adopting secession.

The position which Hicks, with some shifting, had held was no longer tenable. Two courses were open to him—both somewhat in conflict with his previous record—either to advocate a breaking away from the Union on the grounds that sufficient provocation was offered for this by coercion; or to swallow his scruples in regard to coercion, and to support the Federal administration. Hicks had shortly before declared himself in favor of the founding of an unconditional union party;<sup>1</sup> but when he realized how seriously fraught with consequences such a step would be in case of the outbreak of a war, he hesitated. This hesitation was by no means peculiar to Hicks, for throughout the country, and especially in the border slave states, many of the most pronounced of the adherents of the Union shrank back when called upon to advocate coercion measures. Hicks' hesitation was of short duration, comparatively, but while it lasted, stirring events

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<sup>1</sup> Letter of James U. Dennis to Hicks, March 28, 1861 (MS.).

took place, and Washington trembled for its safety. This uncertainty of purpose of Hicks preceding his closer attachment to the Federal administration has given rise to bitter criticisms.<sup>3</sup>

Excitement in Baltimore was growing so strong, that on the day following the publication of Lincoln's call for volunteers, a telegram was sent to Hicks urging him to come to the city. He complied immediately, and on finding the situation there very critical, went to Washington where he had interviews with Lincoln, Scott and Cameron, in which he represented to them the intense opposition of the people of Maryland to any attempts to secure by force the return of the seceded states. Hicks was assured positively that the volunteers desired from Maryland were not to be taken out of the state except for the defense of the District of Columbia; but after his return to Baltimore, Hicks seemed to have had some misgivings as to the conclusions reached by his interviews in Washington, and thereupon telegraphed to Lincoln for a definite statement on the point. On the same day, April 17, Cameron replied by two telegrams, assuring Hicks that the troops from Maryland were only to be used for the defense of "public property of the United States within the limits of the State of Maryland," and "for the protection of the Federal Capital."

Hicks then determined to make arrangements to fill the quota of four regiments, and wrote to Cameron asking for arms and accoutrements.<sup>4</sup> He was on April 19, in the act of signing the order for the calling out of the troops when informed of the riots in the streets.<sup>4</sup> The next day,

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<sup>3</sup> As an instance: "The conclusion is inevitable that he [Hicks] kept himself in equipoise and fell at last as men without convictions usually do, upon the strongest side."—Jefferson Davis: *Rise and Fall of Confederate Government*, volume i, p. 337.

<sup>4</sup> To be found in *Letter Book of the Executive*; also in *War of Rebellion*, series i, volume li, pp. 327-8.

<sup>4</sup> *Proceedings of the Executive.*

Hicks notified Cameron that in view of the heated condition of the public mind, and also since the "rebellious element" was "in control of the arms and ammunition, he thought it prudent to decline (for the present) responding affirmatively to the requisition made by Lincoln for four regiments<sup>1</sup> of infantry."

The excitement in Baltimore had already become so great, that on April 18, Governor Hicks had issued a proclamation, earnestly urging the people to abstain from heated discussions, since such would easily provoke violent outbreaks. A rash step might lead to consequences fearful in nature. He assured the people that no troops would pass through Maryland except those for the defense of Washington; and that very shortly the people of Maryland would have an opportunity in a special election for members of Congress "to express their devotion to the Union, or their desire to see it broken up." Mayor Brown supplemented this proclamation by a similar appeal to the people to be orderly. On the same day Cameron sent a dispatch to Hicks informing him of the threats to prevent volunteers from the northern states from crossing

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<sup>1</sup> Except where specific references have been made, the correspondence quoted above is to be found in Document A of the House and Senate Documents, 1861.

<sup>2</sup> Lincoln had assigned Frederick and Baltimore as mustering stations. On April 20, Lieut. Macfeely, the officer assigned to Frederick, apprised Hicks of his arrival and asked for instructions. The reply came:

"Your letter of the 20th was received this morning. I am directed by the Governor to inform you that no troops have been called out in Maryland, and that consequently your mission is at an end, and you will therefore report to the Secretary of War, who has been informed of the Governor's views in this matter."

Your obedient servant,

GEORGE JEFFERSON,

Private Secretary to Gov. Hicks.

<sup>3</sup> Baltimore Sun, April 19, 1861; Baltimore Exchange, April 19, 1861; Baltimore American, April 19, 1861.

A few days before, Hicks, in response to a serenading party, had taken occasion to express again his hopes that the Union would be preserved.—Baltimore Sun, April 17, 1861.

Maryland to reach Washington, and stating that Lincoln desired the "loyal authorities and citizens to prevent or overcome any forcible opposition to the troops passing through to Washington."<sup>8</sup> The events of "April 19th" have been treated of by many writers, therefore no attempt will here be made to discuss any but special phases of the subject.<sup>9</sup>

The opinion is now generally accepted that the city authorities did all in their power to protect the Sixth Massachusetts from the attacks of the mobs. Mayor Brown himself gave an illustration of remarkable personal courage by marching at the head of the soldiers. The fact is worth bearing in mind that the mobs by no means consisted of the rough elements alone. Many prominent and respectable persons were to be found in their ranks, seeking to repel what they considered an invasion of Maryland.

The meeting which took place in Monument Square on that afternoon was dramatic in a high degree. The flag of Maryland was hoisted. S. Teackle Wallis and other speakers in vehement terms denounced the action of the Federal administration. Mayor Brown was more temperate in his remarks, denying the right of secession, but condemning coercion. Hicks was called for. Wethered and Lowe were appointed a committee to escort him from the hotel where he was stopping; and in a few moments returned with the object of their quest. The crowd swayed for a moment or so and then became quiet, ominously so. Mayor Brown assured the people that Hicks agreed entirely with him that no more troops intended to be used against the South, should be allowed to pass through the state. The flag of Maryland was placed by the side of her chief executive. Hicks' remarks were but few in number. He declared that Brown had not misrep-

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<sup>8</sup> House and Senate Documents of 1861, Document A.

<sup>9</sup> On the whole, the best account is by Mayor George W. Brown in his "Baltimore and the 19th of April." *Studies in Historical and Political Science*, J. H. U. extra volume iii.

resented him, but that he desired to see the Union preserved. An angry cry broke from the crowd. Then Hicks plainly announced his position thus: "I bow in submission to the people. I am a Marylander; I love my state and I love the Union, but I will suffer my right arm to be torn from my body before I will raise it to strike a sister state."<sup>10</sup>

It is not necessary to believe those accounts of the incident which state that Hicks appeared "sheepish" in his manner, or that he had a "hang dog expression" upon his face; yet the fact undoubtedly remains that he was badly frightened—and this is by no means remarkable. Hicks by his refusal to call the Legislature had incurred the violent animosity of a considerable number of the people of the state. His policy of "masterly inactivity" was believed by those persons to have bound Maryland until she was now helpless. Threats upon his life had not been uncommon during the preceding five months. The events of the day had intensified this hatred to fever heat. As Hicks looked around upon the angry faces turned towards him, he must have felt that if he dared to express himself in any way in opposition to the one will and purpose which dominated the crowd, the entire police force of the city present could not prevent his life from being taken.

Hicks immediately issued orders for the calling out of the local military companies. A dispatch was sent by him and Mayor Brown to Lincoln stating that a collision had taken place "between the citizens and the northern troops," but that the state militia was competent to "preserve peace"; therefore, "send no more troops here."<sup>11</sup> About midnight a committee was sent to Washington bearing a letter from Hicks and Mayor Brown which described more in detail the disorders of the day.

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<sup>10</sup> The language employed by Hicks, and the details of the affair are variously stated, yet no material differences in these accounts exist.

<sup>11</sup> Baltimore Sun, April 22, 1861.

On the night of the 19th, a memorable meeting was held in the house of Mayor Brown where Hicks was staying. Subsequently a bitter controversy arose as to what really took place there. Hicks was feeling so unwell that he was obliged to hold the conference in his bed-room. The action of the Federal administration in using Maryland as a passway for troops to be employed against the seceded states was vehemently denounced, and the opinion was generally shared that similar occurrences must be prevented in the future if possible. Little hope was entertained of prevailing upon Lincoln at the time, if at all, to accede to the public demand in Maryland. It was then decided that prompt measures were necessary to keep soldiers of the United States Government from crossing the state. As the most efficient means of accomplishing this end, the burning of the bridges at the railroads connecting Baltimore with the North was settled upon, and the consent of Hicks asked. The latter agreed that troops should not cross the state, but spoke of the seriousness of the question of burning the bridges, and pleaded lack of authority on his part to give consent thereto.

What followed then is not entirely beyond dispute. Mayor Brown, his brother, Cummings Brown, Ex-Governor Enoch Louis Lowe, and Marshal Kane state that Hicks seemed to be persuaded by the arguments brought to bear upon him, and signified that he would offer no objection to the proposed undertaking. But the reply came that his express order was necessary, since Mayor Brown's jurisdiction did not extend beyond the city. Then, it is claimed, Hicks definitely gave the order for the burning of the bridges.<sup>12</sup> On May 4, Hicks sent a message to the Senate of Maryland in response to a request<sup>13</sup> from that body for information on the point. In this he denied that he gave his consent to the destruction of the bridges.<sup>14</sup>

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<sup>12</sup> House Documents of 1861, Document G.

<sup>13</sup> Journal of Senate of 1861, p. 33.

<sup>14</sup> Ibid., p. 64.



This was soon followed by an "Address to the people of Maryland" in which he took the same stand." Hicks admitted that he was excited but that he went no further than to say "that the Mayor could do as he pleased—that I had no power to interfere with his design; if this be consent to the destruction of the bridges, then I consented."<sup>18</sup> He made the point that the bridges on the Philadelphia, Wilmington and Baltimore and the Northern Central Railroads were set on fire within one hour after the so-called consent was given.

In view of the intense excitement which was prevailing, it is not surprising that the records of that time which come down are often contradictory. However, it is known that a number of bodies of men, some sent by the authorities of the city, and others acting upon their own responsibility left Baltimore for the purpose of destroying the bridges in question. For the purposes of this paper, it is not necessary to know where the men who destroyed the bridges received their orders, but rather whether Hicks gave his consent thereto. In regard to the meeting which took place at Mayor Brown's house, it should be borne in mind that all the persons present were very much excited, and that nothing was put in writing at that time. Hicks was strongly opposed to the passage of troops through Maryland, and moreover was completely exhausted from the strain he had been under during the day. Possibly he expressed himself more strongly than he intended; and then, besides, words spoken at such times of excitement are frequently misconstrued. However, there can be little doubt but that Hicks gave that night some form of authorization for the burning of the bridges.

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<sup>18</sup> Moore's Rebellion Record, volume ii, p. 181; Sun, May 16, 1861.

<sup>19</sup> "I do not deny that the proposed act, unlawful though it was, seemed to be the very means of averting bloodshed. But it would have little become me as Governor of the State to consent to an infraction of the laws which I had sworn to enforce."

The point has been dwelt upon because it possesses more significance than at first may seem apparent. By this act, Hicks for the moment allied himself with the opponents of the United States Government and dealt a blow at the safety of its capital. As Senator Sherman has said, by the destruction of the bridges, the safety of Washington was seriously jeopardized."

The point also derives importance from the fact that in a very short time Hicks denounced all measures hostile to the United States Government as those of rebellion. This short defection was overlooked, and Hicks was soon on cordial terms with the administration. In those days of rapidly shifting issues and as rapidly changing views upon these, it was not always deemed advisable to question the past orthodoxy of even the most zealous. Moreover, in justice to Hicks, it should be remembered that he accepted the doctrine of the coercion of the states adopting secession, as did many of the prominent persons of the times, and indeed even some of those who stood high in the Federal administration, only after considerable hesitation and after more or less vigorous attempts to protest against it.

The following day Lincoln sent word to Hicks that he desired to consult with him and Mayor Brown immediately. Hicks had in the meantime returned to Annapolis, and on receiving the message, telegraphed to Mayor Brown: "My going depends upon you." An understanding was not effected between the two, and thereupon Mayor Brown, accompanied by several prominent citizens of Baltimore, had an interview with Lincoln in which they set forward the danger to be incurred in attempting again to pass troops through Baltimore. A promise was extracted that if possible the troops would march around the city.

On the same day, United States Senator Anthony Ken-

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" Correspondence between Sherman and S. Teackle Wallis.

nedy, and J. Morrison Harris, acting entirely independently of the party of Mayor Brown, had interviews with Lincoln, Seward, Scott and Cameron. At first an endeavor was made to prevent any troops from passing through any portion of Maryland, but this the administration positively refused to consent to, showing that Maryland afforded the only means by rail by which Washington could be approached, directly, from the North. As the plan least liable then to provoke bloodshed, Kennedy and Harris suggested that the line of transit be as follows: from the mouth of the Susquehanna River to Annapolis by water, and from thence to Washington. Cameron feared that railroad facilities could not be obtained to cover the latter part of the route, but to meet this objection, Kennedy and Harris secured the promise of President Garrett of the Baltimore and Ohio Railroad to furnish transportation. A telegram was then sent to Mayor Brown by Kennedy and Harris which stated positively that troops would not pass through or around Baltimore.<sup>18</sup> In virtue of the agreement reached in Washington, Kennedy and Harris on reaching Baltimore, with the approbation of the Police Board of Baltimore City went to the camp of volunteers from Pennsylvania at Cockeysville, and persuaded the commandant to withdraw beyond the northern boundaries of the state.<sup>19</sup>

Meanwhile events in another portion of the state were attracting attention. General Benjamin Butler arrived in Philadelphia on April 20, with a detachment of volunteers from Massachusetts. Finding the direct route to

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<sup>18</sup> Baltimore Republican, April 22, 1861.

<sup>19</sup> Full account of the trip to Washington, etc., is given in a paper read by J. Morrison Harris before the Maryland Historical Society, March 9, 1891. See Publications of the above, 28-31.

It seems probable that the administration had realized by this time the impossibility of carrying troops by way of Baltimore, not only because of the opposition prevailing in the city, but also because the railroad bridges were destroyed, and had already given orders for the change in route. See article by Adolph Von Reuth in Washington Star, March 12, 1891.

Washington closed, he went by rail to Perryville at head of Chesapeake Bay, and proceeded thence to Annapolis by water. Butler had planned to take Annapolis by storm, but much to his surprise, found but little opposition from the local authorities.<sup>20</sup>

The prospect of armed forces in the capital of the state alarmed Hicks. He immediately sent a dispatch to Butler, strongly protesting against the landing of troops at Annapolis. Butler replied that circumstances demanded that he should disembark at Annapolis, and that he only desired to pass peacefully to Washington. He also took advantage of the opportunity to reproach Hicks for the use of the term "Northern troops"—"they are," wrote Butler, "a part of the militia of the United States obeying the call of the President." Indeed, the situation seemed to Hicks to be one of extreme gravity. According to rumor, companies were organizing in Baltimore to come to Annapolis and to prevent by force the threatened disembarkation. Hicks telegraphed to Mayor Brown urging him to prevent any such movement from taking place, also stating positively that the troops would not land at Annapolis. Meanwhile Hicks was continually urging Lincoln not to provoke bloodshed by attempting to force a way through Maryland. The Federal administration insisted, however, that the troops must land at Annapolis.

Though Butler had written courteously to Hicks for permission to make a landing at Annapolis, yet from the tenor of his letter it is apparent that he desired rather to make a statement of his intentions than to formulate a request. He looked upon Maryland, in view of the events of the "19th," as hostile territory, which required prompt and severe measures to subdue. An interview between Butler and Hicks resulted in no agreement between the two; in fact, it is not probable that Butler was at liberty to make material changes in his plans.

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<sup>20</sup> Parton: General Butler in New Orleans.

Seward wrote Hicks that passage to Washington through Maryland had to be effected, and that the route by way of Annapolis had been agreed upon by prominent citizens of Maryland as the one least open to objections. Hicks realized that further opposition was useless, but still condemned the policy of the administration as most unwise.<sup>21</sup> The course followed by Hicks was adversely commented upon by many citizens of the state. They contended that Maryland had been humiliated by the action of her chief executive, who, after practically forbidding the landing of the troops, had then tamely given in. Instead, it was claimed, the Governor should have called out the state militia to have enforced his stand.<sup>22</sup> Such an act Hicks could hardly have considered seriously for a moment. In the first place, it is extremely improbable that he was willing to use armed force against the United States Government. At any rate, the disasters sure to attend such a step must have been very apparent to him. The state militia was in no condition to be mustered in, and most certainly not to be used to oppose the United States Government.<sup>23</sup>

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<sup>21</sup> The relations between Butler and Hicks at this time may be found from consideration of: Official Records of the Rebellion; House and Senate Documents of Maryland Legislature, 1861, Document A; Letter Book of the Executive; Proceedings of the Executive; Daily newspapers; Private correspondence of Hicks, etc.

<sup>22</sup> Baltimore Sun, April 30, 1861.

<sup>23</sup> Several weeks later, Hicks did intimate in a letter to Butler that he would use the forces of the state to compel the withdrawal of free negroes from the company of Butler, if the latter, himself, did not take steps to do so. However, nothing came of it.

## CHAPTER VII.

### CALLING OF THE LEGISLATURE.

The Monday following the "19th," Hicks spent alone in his room. To him it was indeed a day of perplexity and of doubt. Whatever may have been his misgivings as to what should be his relations with the United States Government, he felt convinced that it was not advisable to resist any longer the demand for the convening of the Legislature.

In his message to a subsequent Legislature upon its assembling on December 4, of the same year, Hicks gave his reasons for having changed his mind in regard to the necessity of legislation by the state. He said that when "Coleman Yellott, Esq., late Senator from Baltimore City, after advising with the Board of Police Commissioners, and instigated by the more prominent of the conspirators, unlawfully issued his 'Proclamation'<sup>1</sup> for an assembling of the Legislature at Baltimore, where a portion of the secession element was congregated, I knew it was time for me to act." Further on, he stated that he made an effort to call out the state militia, but on finding that very many of the officers were "in league with the conspirators," he decided that the militia would do more harm than good.<sup>2</sup>

The fact is undoubtedly true that, if Hicks had not summoned the Legislature at that time, the people in some unconstitutional way would have taken the matter in their

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<sup>1</sup> Yellott's "Proclamation" has not been found. However he certainly went so far as to prepare a letter to his fellow-members of the Legislature asking them to meet in Baltimore to consult together.

<sup>2</sup> House Documents, 1861-2, Document A.

own hands. A journal of Baltimore City expresses the situation quite conservatively thus: "That Governor Hicks' refusal to yield will encourage a spontaneous demonstration of the people towards some other form of organized authority . . . make necessary those revolutionary proceedings which it is best to avoid."<sup>3</sup> On April 22, Hicks, in view of the "extraordinary condition of affairs," issued a summons for the assembling of the Legislature at Annapolis on April 26.<sup>4</sup>

The summoning of the Legislature by Hicks, after he had so long refused to do so, has often been considered as a weakening on his part. In some respects it was, since thereby he placed in power a body which he had so often declared to be unfitted to act in the existing crisis. Likewise it was a step which in a measure arrayed him against the Federal Government, since he had stated his belief that the Legislature if convened would lend active support to the secession movement in the Southern states. However, there are other points to be considered. Hicks' refusal to call the Legislature was a constant menace to his life. Irrespective of this point, he recognized clearly that he was no longer in a position to control, or even to direct the policy of Maryland. If he had resisted any longer, his grasp would have been gone forever; therefore, in accordance with his principles, he deemed it best to bend a little to the storm. He had always declared that the people did not want the Legislature convened; now there could be no mistake that a demand for this body existed. Moreover, he was strongly opposed to Maryland being used in any way as an instrument for coercing the seceded states.

The call for the Legislature was issued on the 22d, thereby allowing only four days before the time appointed for the convening of that body. Strenuous efforts were made to bring the members to Annapolis; thus a steamer was

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<sup>3</sup> Baltimore Sun, April 22, 1861.

<sup>4</sup> Proceedings of the Executive.

chartered by Coleman Yellott, with the approval of Hicks,<sup>1</sup> and was sent to the Eastern Shore to notify the members there, and to bring back as many as possible.

On the last day of the previous session of the House of Delegates the seats of the members of that body from Baltimore City were declared vacant on the grounds of frauds in the election. On the same day that the summons of the Legislature appeared, Sheriff Dutton, of Baltimore, issued a writ for a special election on April 24, to fill the vacancies.<sup>2</sup>

The "States Rights and Southern Rights Convention," which had met on April 18, again assembled on the night of April 22, and nominated John C. Brune, Charles H. Pitts, William G. Harrison, Hanson Thomas, S. Teackle Wallis, Ross Winans, H. M. Morfit and Lawrence Langston for the Legislature. The election on the 24th passed off without marked disturbances. There was no opposition to the candidates named above, though only 9244 votes were cast as against 30,148 in the previous election. Senator Sherman, of Ohio, among others, claimed that the police authorities had prevented opposition votes from being cast.<sup>3</sup> This was strongly denied. Undoubtedly public feeling ran very high in the city on that day and prevented any opposition from materializing. Yet the smallness of the vote can best be accounted for, it would seem, by the fact that when only one ticket is in the field, a small vote usually results.

The legality of this election was questioned, since, according to the law, ten days should elapse between the issuance of the notice by the sheriff and the time appointed for the election in all cases where vacancies were to be filled.<sup>4</sup> However, the men voted for on the 24th took

<sup>1</sup> Message of Hicks to House of Delegates, May 4, 1861.

<sup>2</sup> Speaker Kilbourn had sent the writ for a new election on May 10, 1860, but Sheriff Dutton did not issue same until nearly a year later, on April 22, 1861.

<sup>3</sup> Correspondence between Sherman and S. Teackle Wallis.

<sup>4</sup> Constitution of 1851, Article III, Section 29.



their seats in the House of Delegates without a protest. Later in the session a motion was proposed which declared that the election was void, but the House refused to take this view of the matter.<sup>9</sup>

At a meeting which had taken place between Hicks, the Mayor of Annapolis and General Butler, the latter had been informed that his landing at Annapolis would be useless, since the rails of the Annapolis and Elkridge Railroad were about to be taken up, the road being private property. Butler was by no means daunted by this statement, but proceeded to take possession of the road, stating shortly afterwards that he could not understand why members of the Legislature should be allowed to pass in one direction over the road, while the soldiers of the United States could not pass in the opposite direction. Hicks on hearing of this step sent a protest to Butler, "because, without assigning any other reason, I am informed that such occupation of said road will prevent the members of the Legislature from reaching this city." In subsequent communications Butler offered to coöperate with Hicks in the "suppression of any insurrection against the laws of Maryland," and especially to assist in keeping down the negroes should the threatened uprising of the members of this race take place. Governor Hicks promptly and somewhat coldly declined the offer of assistance.<sup>10</sup>

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<sup>9</sup> Fiery of Washington County proposed the motion. The committee reported that the question was a trivial one, since only four days intervened between the publication of Hicks' proclamation and the convening of the Legislature. Moreover Sheriff Dutton had held for nearly a year the writ providing for a new election; and hence his negligence was the cause of the failure of the city to select delegates. Such action on his part should not be sufficient to make the city suffer for lack of representation. The debates which occurred over this motion were very spirited. One of the delegates, to the amusement of his fellow-members, proved to Fiery conclusively that according to the strict letter of the law his (Fiery's) election was void. *Baltimore American*, May 13, 1861.

<sup>10</sup> Governor Andrews of Massachusetts upon being apprised of this proffer of assistance, wrote to Butler censuring him for offering

Meanwhile the situation in Maryland was anxiously watched. In view of the location of Washington, the influence of the state bid fair to be of especial importance in whichever way she should cast her lot. The press of the state, holding widely different views as to the solution of the political problems, strove laboriously to prove that whatever had happened, and whatever might be the status of the seceded states, war was unnecessary. One paper attempted to show that a conflict over the possession of Washington was useless even if "Maryland remains with the North," because in a short while the Federal Government will change its seat of its own accord, since surely it would not care to have "its capital in gunshot of a foreign land."<sup>11</sup>

The plans suggested for restoring peace were at times unique. One of the closest of the political friends<sup>12</sup> of Hicks wrote to him suggesting that troops from Maryland and Virginia go to Washington and protect Lincoln and his cabinet, while Governor Letcher, of Virginia, and Hicks should hurry to Harrisburg as hostages of the good faith of the armies and governments of their respective states. From the remarks which Hicks made from time to time, it is hardly probable that he was willing to stand security for the Maryland authorities, and for the many excited men in the state militia.

The week following upon April 19 was one of intense excitement. Pro-southern sentiment showed itself in mass-meetings and in the organization of military companies throughout the state. Marshal Kane, after endeavoring to protect the Massachusetts soldiers on the

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assistance to a "community in arms against the Federal Union." The soldiers under Butler had not been formally mustered into the service of the United States, and were therefore nominally under the commander-in-chiefship of Governor Andrew. Parton: General Butler in New Orleans, 94-98.

<sup>11</sup> Baltimore Sun, April 22, 1861.

<sup>12</sup> William T. Goldsborough of Dorchester County, Maryland. Letter to Hicks, April 24, 1861 (MS.).

19th, on the next day plainly announced his intention to do his utmost to prevent Maryland from being used as a highway for troops going to Washington or to the South.<sup>13</sup> The City Council of Baltimore appropriated \$500,000 for the defense of the city, and some of the counties took similar steps. It was ordered that no flags should be displayed, nor should any provisions leave the city. Mayor Brown asked for loans of arms and ammunition. Military companies were rapidly organized and drilled, and arms were received from Virginia. It was believed that untiring efforts were necessary to put the city in a state of defense against the "hordes" which were hourly expected from the Northern states. The riots of the preceding Friday had aroused throughout the North a strong desire for retaliation upon Baltimore. The following newspaper clipping illustrates some of the plans which were urged for the capture of the city. The assaulting party should pass "over roofs, through breaches in the walls, by doors or windows by sappers and miners with crowbars, with sledge hammers, with picks, with gunpowder in small bags, armed with hand grenades, revolvers and cutlasses, or such other weapons as shall be best adapted to a storming party and a hand-to-hand conflict."<sup>14</sup> The fact is worthy of note that comparatively little was said of the secession of Maryland during this excitement. For the time being this question was regarded as subordinated to that of resistance to the attempt to draw Maryland into coöperation with the movement against the Confederacy. Though the Union was believed to be divided irredeemably, yet there was a marked hesitation, except on the part of a very small minority, to urge instant secession, though perhaps the larger number of people in the state believed that of the two divisions, which seemed inevitable, Maryland would in time go with the Southern. Whatever

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<sup>13</sup> Kane's telegram to Bradley T. Johnson. Frequently quoted.

<sup>14</sup> New York Tribune. See Baltimore Sun, May 2, 1861.

differences of opinion existed among the people of the state, on one point they were practically united, and that was in opposition to the aims and principles of the Republican party. Lincoln since his election and inauguration had done little to overcome this objection; and indeed the apparently trivial manner with which he treated the question confronting him aroused in Maryland little confidence in his ability to cope with the problems of the situation. As an instance, on April 22, a delegation from the local Young Men's Christian Associations in Baltimore called upon Lincoln and urged him to prevent further passing of troops over Maryland. He replied: "I must have the troops, and mathematically the necessity exists that they should come through Maryland. They cannot crawl under the earth and they can't fly over it, and mathematically they must come over it. Why, sir, those Carolinians are now crossing Virginia to come here and hang me, and what am I to do?"<sup>18</sup> Upon the entreaty of the delegates that he give his consent to a peaceful separation of the seceded states, Lincoln declared that "there would be no Washington in that, no Jackson in that, no spunk in that," and further expressed his determination to "run the machine as he found it." After leaving, one of the committee exclaimed: "God have mercy upon us when the Government is put into hands of a man like this"<sup>19</sup>—an expression of a sentiment which found its echo in the hearts of even the most pronounced adherents of the Union in Maryland. The real Lincoln was yet to be disclosed.

On April 24, Hicks issued a proclamation changing the place of the meeting of the Legislature from Annapolis to Frederick.<sup>20</sup> The reason assigned was that "in view of

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<sup>18</sup> The language is quoted differently by various writers. The incident is generally mentioned by biographers of Lincoln; it was published in the newspapers at the time.

<sup>19</sup> Baltimore Sun, April 23, 1861.

<sup>20</sup> General Benjamin Howard among others urged the step upon Hicks. See letter of Howard to Hicks, April 24, 1861 (MS.), Journal of Senate, 1861, p. 4.

the extraordinary condition of affairs," the change in location was desirable to secure the "safety and comfort of the members."<sup>18</sup> A number of months later, Hicks declared that he had given the order to meet in Frederick because of the well-known strength of the Union sentiment of that town.<sup>19</sup> Hicks was undoubtedly influenced by both motives. He desired to see the seat of the Legislature located in a strong Union locality; furthermore he dreaded the results of a close contact of General Butler with the members of the Legislature, many of whom were known to be bitterly disposed towards the Federal administration and its representatives.

During the night of April 26, Hicks went to Baltimore from Annapolis by water, and from there hastened to Frederick.<sup>20</sup> Here his position was by no means without its perils. The ultra-Southern party had not forgiven him for his course in preventing Maryland from taking some action earlier through her Legislature. Threats and plots upon his life, which had not been infrequent during the past, continued to be a source of danger to him. James R. Partridge, the Secretary of State, deemed the risks too great and resigned his position.<sup>21</sup> Among the more conservative class of sympathizers with the movement in the Southern states, there were many who gladly welcomed Hicks, as they supposed, into their ranks, though considerable was said about an "Eleventh Hour man."

During the previous session of the Legislature, which consisted practically of the same members<sup>22</sup> that were now to meet in special session, considerable friction had oc-

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<sup>18</sup> Baltimore Sun, April 25, 1861.

<sup>19</sup> Message of Hicks to Legislature, on December 4, 1861. House Documents, 1861-2, Document A.

<sup>20</sup> Baltimore Republican, April 26, 1861.

<sup>21</sup> Proceedings of the Executive. Subsequently Grayson Eichelberger of Frederick was appointed Secretary of State and his selection was confirmed by the Senate.

<sup>22</sup> Excepting members of the House of Delegates from Baltimore City, and one member from Washington County.

curred between that body and Hicks. Subsequently Hicks had not hesitated to speak disparagingly of the status of the Assembly, but now on the main question of the day, no appreciable difference was apparent. Hicks by his remarks in Monument Square on April 19 had declared himself entirely out of sympathy with the policy of Lincoln. Since that day he had been, on the whole, reticent; but the very fact that he had summoned the Legislature, and that he had changed the place of its assembling, implying that he desired the members of the Legislature to be freed from the influence and control of the United States soldiers in Annapolis—these facts strengthened the impression that Hicks was in heart and soul with the friends of the South.

## CHAPTER VIII.

### ASSEMBLING OF THE LEGISLATURE.

The Legislature met in the Court House, in Frederick, at 1 P. M., on Friday, April 26, but after a few days held its sessions in the German Reformed Building, corner of Church and Market streets. Seventeen of the twenty-one Senators, and a large number of the members of the House of Delegates answered to the first roll-call, showing the success of the strenuous efforts to secure the presence of a quorum on four days' notice. Some of those present had left their homes with only a moment's warning, and had hastened to use their efforts to ward off the adoption of measures which would tend to carry Maryland into secession; others had directly contrary aims in view, but all were alive to the fact that the incoming session of the Legislature would be the most critical in the history of the state. A rash step meant untold suffering, and, in truth, the fortunes and lives of the citizens of Maryland were at stake.

The message of Hicks to the Legislature was awaited with great interest. If he should in vehement language denounce the policy of Lincoln, and urge coöperation with the seceded states, little doubt was felt by many that in the excitement of the moment the state would be swept into secession. The Governor's message showed that he realized the gravity of the situation. The events which had recently taken place were narrated, and a further appeal for calmness was added. The scenes of bloodshed in Baltimore on April 19 were described as the work of an "irresponsible mob."<sup>1</sup> He did not consider the

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<sup>1</sup> In opening message to Legislature on December 4, 1861, Hicks spoke of the occurrence as a "treasonable outbreak."

question of secession, spoke of the possibility in the future of Maryland's "taking sides against the Federal Government," but advised against any such action at present. It is not clear whether he refers to an attempt at rebellion, or whether he believed the state had a constitutional right to sever its connection with the United States Government. Indeed, there seems to have been a confusion in his own mind. Hicks was possessed with the idea which was so prevalent in the border slave states, that is, that a state could remain in the Union, yet refuse to take any part in the war; could be in the Federal Union, yet not render assistance to it. Consequently it is not surprising that Hicks should have suggested to Lincoln that Lord Lyons, the English ambassador to this country, be requested to act as "mediator between the contending factions."<sup>2</sup>

The message of Hicks,<sup>3</sup> as a whole, is singularly non-committal. He had deemed that the occasion demanded the action of the Legislature; yet he recommended really no policy to it on its convening, except the negative plan of passive adherence to the Union and of neutrality. The truth of the matter is that Hicks could not well do otherwise. He was not willing to urge an alliance with the Southern states, nor did he dare to inflame public sentiment still higher by advocating the rendering of assistance to the Federal administration, even if he approved of such a course. He thought Maryland would be the probable seat of bloody war; from such a calamity he expressed his desires to see the state preserved.

Hicks by his course during the preceding six months had won strong expressions of approval from the Northern press. But now the people in the North believed that,

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<sup>2</sup> Seward in reply scorned the suggestion to call in a foreign power, and took the opportunity to chide Hicks for Maryland's apparent indifference to the Union when in its greatest peril. House Documents of 1861, Document A.

<sup>3</sup> Hicks' message is found in the House Documents of 1861. Doc. A.



after having proved a formidable bulwark to the attacks of the secessionists in Maryland and the South in general, he had at last succumbed and was now leagued with those who were endeavoring to break up the Union. Some of the journals were very severe in their criticism of him and did not hesitate to call his conduct treasonable.<sup>4</sup>

The Democrats controlled the Senate by a single vote and the House of Delegates by a larger majority. Possibly it may be said that, in the main, the most radical element of the Southern sympathizers in the Legislature found its nucleus in the Democratic party, but in the exciting and troublous scenes which were enacted during the sessions of this Legislature, it is impossible to group the actors satisfactorily on the lines of past party affiliations. For instance, H. H. Goldsborough, Senator of Talbot county, was a Democrat, yet he was a leader of the very small minority which may be called the extreme Union party. Coleman Yellott, an open secessionist and father of the ill-fated "Safety Bill," had been elected as a Know Nothing. The Senate, on the day after assembling, adopted unanimously resolutions styled an "Address to the People of Maryland." These stated that the Legislature did not have the right to pass an act of secession, though the promise was held out that a sovereign convention would be called if the demand for such seemed clearly evident.<sup>5</sup>

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<sup>4</sup> Philadelphia Ledger, April 25: "Whatever the motives claimed for Governor Hicks may be his acts show that he is either playing into the hands of the secessionists or else weak in a situation where to be weak is to be wicked. By his proclamation that no more troops should pass through Maryland under the pretext of the Border states remaining neutral, he has given countenance to the revolutionists who are endeavoring to cut off all communication with the seat of government. He should have suffered himself to be held as a prisoner of war; he should have called on the Washington government for aid, but he should have died a martyr rather than have put his hands to any such declaration. His proclamation is a violation of his oath to support the Constitution of the United States . . . . His proclamation is an act of treason."

<sup>5</sup> Senate Journal, April 27, 1861, p. 8.

Such was the haste with which these resolutions were hurried through, that the Senate had put itself on record before the message customarily sent to that body by the Governor, upon its convening, had been received. These resolutions were then sent to the House of Delegates, which took action the same day, though not through concurrence or disagreement with the resolutions of the Senate. A memorial from Prince George's county had been read asking for the immediate passage of an act of secession. The Committee on Federal Relations adopted a report setting forth the constitutional inability of the Legislature to comply with this request.

The minority report was also unfavorable to granting the prayer of the petitioners, but was silent as to the constitutional power of the Legislature to do so. The majority report was accepted, the minority report having been defeated by a vote of 53 to 13.<sup>6</sup> Only one member protested that neither report of the committee gave an opportunity to vote for secession.<sup>7</sup>

The action of the Legislature was somewhat of a surprise. It was believed that the advocates of immediate secession would show greater strength. While denying the right of legislatures to pass acts of secession, the implied meaning of the resolutions is that the state through a convention could do so, and that such a body would soon be called into existence to consider the question.

The Legislature thus early disavowed any attempts by its own authority to break away from the Union, yet a pronounced opposition to the United States Government is the chief characteristic of its legislation during the remainder of the session. The action of the authorities of Baltimore on April 19 and subsequently in regard to the passage of troops through the city, and the attempts

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<sup>6</sup> Journal of the House of Delegates, p. 22.

<sup>7</sup> The writer has been informed by a prominent citizen of that time that a secession ordinance was carried to Frederick in the pocket of a leading member of the Legislature.

to put the city in a state of defense were approved.<sup>9</sup> The loan of \$500,000 was legalized.<sup>9</sup> Leave was granted the Ways and Means Committee of the House to prepare a bill appropriating \$2,000,000 for the defense of the state.<sup>10</sup> Other financial measures of an unusual nature received the attention of the Legislature at this session. The suspension of specie payments by the state banks was held to be justifiable because of the commercial disturbances.<sup>11</sup> As another measure of relief, the banks of issue were empowered to send out notes of less than one dollar to the amount of \$5000, or to ten per cent of the paid-in stock.<sup>12</sup> On April 27, leave was granted the Currency Committee of the House to introduce a bill permitting the Mayor and City Council of Baltimore to issue small notes to a limited amount to be used as currency. Several days later, the committee reported unfavorably on the project, and the matter was referred to the Baltimore delegation.<sup>13</sup> It is hardly surprising that the subject was not introduced again.

On April 27, the House of Delegates called upon Hicks and Adjutant General Brewer for an account of the expenditure of the \$70,000 provided for at the previous Legislature for the purchase and distribution of arms, etc., to military companies throughout the state. The report which followed showed that arms had been sent to nearly every county in the state. The House, however, did not approve of the manner in which this had been done, and even alleged irregularities in accounts.<sup>14</sup> Subsequently a committee was appointed to examine the records of the Adjutant General.<sup>15</sup> Likewise the commissions of several officers in the state militia who were known to be pronounced Southern sympathizers, and who were technically

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<sup>9</sup> April 27 and May 8.

<sup>9</sup> Ibid.

<sup>10</sup> April 29, 1861. Bill never reported.

<sup>11</sup> May 3, 1861.

<sup>12</sup> May 1, 1861.

<sup>13</sup> Journal of House of Delegates, pp. 21-29.

<sup>14</sup> June 12, House Documents of 1861, Document I.

<sup>15</sup> June 20, Journal of House of Delegates, p. 289.

disqualified because of failure to observe certain regulations, were made valid.

These instances, which are not very serious, represent the only attempts made by the Legislature to pass measures warlike in nature, or actively hostile to the United States Government, with the exception of the mysterious and ill-fated "Safety Bill." The Legislature had hardly met before the air was thick with rumors of projects to place Maryland in a complete state of defense; and in so doing, to take away from Hicks as much authority as was possible. On May 1, in secret session, Senator Yellott introduced a bill subsequently widely known as the "Safety Bill." The measure, in short, provided for the appointment of commissioners with powers almost dictatorial in extent, and who were to replace not only the head of the military organization in the state, but were also to obtain a supervision in some respects over the civil departments of the state government. The argument was brought forward in defense of the bill that Maryland was in a critical condition, and that only drastic measures, implying a partial introduction of military law over the state, would suffice to cope with the dangers threatening the people.<sup>18</sup>

The Senate, after holding secret sessions on two days, was unable to come to any agreement as to the provisions of the bill, and thereupon opened its doors and gave the proposed bill to the public. The evening of May 2 and all of the day following were given to a discussion of the measure. Its opponents at first were in a minority, but were untiring in their efforts to defeat it. When it seemed probable that the proposed bill would pass, attempts were made to change the personnel of the board as provided for, by placing on it men who were "strongly Union."

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<sup>18</sup> The commissioners were to be seven in number. Of those originally selected, Hicks was the only one not known to be a pronounced Southern sympathizer.

Amendments were also offered which would strip the measure of its most radical features, but these were generally defeated. As an instance, the Senate, by a vote of eight to twelve, refused to insert the clause: "but shall not have power to treat with any foreign power." One member in sarcasm suggested that the measure be called not a "Bill for the Public Safety," but to "Establish a Military Despotism." After much heated discussion and successful attempts at filibustering, during which the opposition seemed to be gaining ground, on May 3, the bill was sent back to the Committee on Federal Relations, from which it never reappeared.

Though nearly every one found some features in the proposed measure which were deemed objectionable, yet undoubtedly a not inconsiderable number of persons looked upon its provisions, taken as a whole, distasteful as they were and out of harmony with the generally accepted theories of republican institutions, as necessary in view of the position of Maryland in the presence of the Federal Administration. Whatever may have been the original strength of the supporters of the measure, the storm of opposition which soon broke forth was irresistible. Petitions poured in upon the senators, and upon members of the House also, though this body never considered the proposed bill or any similar to it." S. Teackle Wallis, a member of the Legislature from Baltimore and Chairman of the Committee on Federal Relations, subsequently declared that the entire Baltimore delegation was opposed to the measure, and expressed the opinion that the framers and supporters of the bill did not at the time realize its

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<sup>11</sup> Among the petitions was one which came by telegraph. This the Senate refused to consider, but took advantage of the opportunity to attempt to refute the charges made against the proposed bill, and to declare that these had arisen through a misapprehension of the real nature of the measure. This justification was offered simply as a defense of the past, since consideration of the proposed bill, and to declare that these had arisen through a misapprehension 1861, May 8, p. 90.

far-reaching effects, not to mention its undoubted unconstitutionality." A senator who had supported the bill on its second reading explained that he had only done so in order to open it to the proposers of amendments." The bill was strangled in the committee after recommitment, and no measure at all similar was proposed during the session.

Commercially Baltimore was almost prostrated. Railroad communications with the North were cut off by the destruction of the bridges on the Northern Central and the Philadelphia, Wilmington and Baltimore Railroads. Transit to the South was practically impossible since the Annapolis and Washington roads were under the control of the United States Government. Cars bringing provisions were stopped for examination at Relay and other points. Passengers were sometimes allowed to pass over the Annapolis Road after it was repaired, though for several days the United States Government would permit no coaches to pass between Washington and Baltimore except those for the sole purpose of carrying soldiers. The authorities of Baltimore after the outbreak of April 19, had forbidden the sending away of provisions from the city." For a time the markets of the city were almost destitute of food owing to the fear of the country raisers to take their produce into the city. The wharves were deserted, and business in general suffered from stagnation. The condition of affairs was so grievous, that the Mayor and City Council of Baltimore petitioned the Legislature to take steps to open up communications with the North by repairing the railroad bridges which had been

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<sup>18</sup> Correspondence between Wallis and Senator John Sherman of Ohio.

<sup>19</sup> McKaig of Allegany. See *American*, May 10, 1861.

<sup>20</sup> Washington was tided over mainly by the seizure by the United States Government of the output of the flouring mills in Georgetown. Washington in March and April 1861, by Lieut.-Gen. Chas. R. Stone, *Magazine of American History*, volume xiv, 9-11.

injured and in some cases destroyed. Petitions of the same nature were also forwarded by private citizens of Baltimore. In response, the House of Delegates adopted a report declaring as inadvisable the opening of a route to the North, since thereby "facilities for invasion were offered to the fanatical and excited multitudes of the northern cities . . . whose animosity to Baltimore and Maryland is measured by no standard known to Christian civilization, and who publicly threaten our destruction, without subordination even to the Federal authority . . . it would hardly be consistent with the commonest prudence to reopen the avenues which would bring them to our very doors." The occupation of the soil of Maryland, and the seizure of railroads and other works of internal improvement partially or wholly owned by the state were denounced as an outrage upon the honor of the state. The resolutions also provided for the appointment of Otho Scott, R. M. McLane, and William J. Ross as commissioners to communicate in person with Lincoln, and to protest against the treatment of Maryland as a "conquered province." The threat was indirectly thrown out that the Legislature would adopt no measures to reopen communication to the North by way of Baltimore, unless the Federal Administration should explain satisfactorily the harsh measures which had been employed in dealing with Maryland. The resolutions were agreed to by both houses without a dissenting voice.

The committee subsequently reported that Lincoln in the presence of Seward and Cameron, had received them courteously, and had, in the main, agreed with them that as Maryland had not taken a "hostile attitude" against the United States, that indignities should not be cast upon her. However no definite promise was made to them that the military occupation of some parts of Maryland should cease, though the committee expressed a belief that some modification might be expected.<sup>21</sup>

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<sup>21</sup> Senate Documents of 1861, Document D.

This was the first of a number of resolutions in regard to the Federal administration which were passed during the memorable session of the Legislature, and which gradually changed in tone from simple protests to violent denunciations breathing forth an air of defiant hostility to the United States Government.

The friendliness evinced towards Virginia by the Maryland Legislature is everywhere apparent in the records of the relations at this time between the two states. From the time of the election of Lincoln to the outbreak of hostilities, the mass-meetings and various forms of assemblies held in Maryland in favor of a pro-southern policy, had almost invariably staked the action of the state upon the course to be followed by Virginia. This feeling of dependence upon Virginia can be understood when it is considered that not only was Maryland connected closely with this state by an affinity of institutions and industrial activities; but also that Virginia from her geographical situation half surrounded Maryland, and controlled the outlet of her water highways. A feeling had long existed that Maryland's policy was necessarily bound up with that of Virginia. Consequently when complaints of border outrages by Virginia troops arose, the Maryland Legislature showed no irritation, but expressed a willingness to rest the case on the magnanimity of that state.

On the very day that the Legislature assembled, Hicks wrote to the Sheriff of Frederick county asking for an account of the reported seizure of property of citizens of Maryland by Virginia troops from Harpers Ferry. The report was communicated to the Legislature, on April 29, of a meeting held at Weverton, Washington county, which adopted resolutions asking protection from Virginia troops.<sup>22</sup> Immediately a petition was sent to Hicks from certain citizens of the same locality which protested against the resolutions of the meeting at Weverton, and

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<sup>22</sup> Moore: Rebellion Records, volume i, p. 175.



declared that only one house had been searched by Virginia troops, and that had been done without official sanction." The House of Delegates took this view of the matter by a unanimous vote, but favored the sending of a commissioner to Virginia, with powers to make arrangements for the protection of the property and citizens of Maryland from "any ill advised acts of the military forces of Virginia." The Senate concurred unanimously with the resolutions of the House, and Outerbridge Horsey was appointed as commissioner. Hicks also wrote to Governor Letcher strongly protesting against the "outrages" alleged. The members of the House of Delegates disapproved of the position Hicks had taken and declared themselves "confirmed in the propriety of postponing action for the present upon the matters in question by a correspondence between His Excellency, the Governor, and the Governor of Virginia, which they find in the newspapers, and which they presume to be authentic, from its having been several days before the public without contradiction. But for this latter fact, they would have felt it their duty to presume that the Executive would not have corresponded with the Virginia authorities upon a subject which he had brought before the Legislature, and upon which it was acting without at all events apprising us of its character or results. Doubtless however His Excellency has been governed, in so an unusual proceeding, by reasons which he deems satisfactory." Horsey reported to the Legislature on June 6 that Letcher disclaimed any intention to commit outrages upon citizens of Maryland and offered to pay damages for such as committed." Four or five hundred Virginia troops were en-

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<sup>28</sup> Journal of House of Delegates, 1861, p. 54.

<sup>29</sup> Journal of House of Delegates, 1861, pp. 142-3.

<sup>30</sup> *Ibid.*, pp. 176-82.

The claims were settled by Virginia to the satisfaction of the parties demanding damages. Journal of House of Delegates, p. 181.

camped on the Maryland side opposite Harpers Ferry. Governor Letcher on having this fact called to his attention by Horsey replied that if such occupation had taken place temporarily "it could only be justified by the pressing exigency of a military necessity in defense and protection of her own soil from threatened invasion and certainly with no hostile intent towards the citizens of the State of Maryland and that any and all damages to persons or property consequent upon such alleged trespass or occupation should be fully and liberally compensated for."<sup>22</sup> No objection was found by the Maryland Legislature to Virginia's attitude in spite of the fact that Virginia was opposing by force the Federal Union of which Maryland was a member. Indeed the Legislature took considerable pains to preserve cordial relations with Virginia during this session.<sup>23</sup>

The Legislature had shown itself at every step as entirely out of sympathy with the policy of Lincoln; yet no formal declaration on the subject was made for several weeks after the beginning of the session. The principal reason for this was the wide divergence of opinions which existed among its members, and therefore no agreement could be reached. Many sets of resolutions defining in as many ways what should be the policy of Maryland were offered from time to time and buried in the Committee of Federal Relations. Meanwhile the people of the state were anxiously awaiting some formal statement from the Legislature. After numberless conferences and attempts at compromise had taken place, on May 9, the Committee on Federal Relations in the House brought in a report.<sup>24</sup>

The resolutions strongly protested against the policy

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<sup>22</sup> Journal of House of Delegates, p. 180.

<sup>23</sup> A commission was sent to Delaware on a purpose somewhat similar.

<sup>24</sup> Journal of House of Delegates, p. 106; House Documents of 1861, Document F.

of coercion adopted by the Federal Government, and declared Maryland to be entirely neutral in the conflict. Military occupation of the state by the United States Government was condemned as a "flagrant violation of the Constitution." Two other clauses were of special importance: One of these expressed a desire that the Southern Confederacy should be recognized by the United States Government, since the restoration of the former Union was deemed impossible; the second declared "that under existing conditions it is not expedient to call a sovereign convention of the state at this time, or to take any measures for the immediate reorganization and arming of the militia." The House adopted the resolutions by a vote of 43 to 13. The minority had offered substitute resolutions going no further than to declare the neutrality of Maryland while Washington should be the capital of the United States.

The Senate on the same day, May 9, had resolved that a joint committee of eight members—four from the Senate and four from the House—be appointed; two of which were to wait upon the President of the United States, two upon the President of the Southern Confederacy, two upon the Governor of Pennsylvania, and two upon the Governor of Virginia. The object aimed at was the obtainment of a cessation of hostilities until Congress should meet and have an opportunity to settle the existing troubles. On May 13, the House refused to concur with the resolutions of the Senate, urging with much reason that as Virginia and Pennsylvania were only members of general governments, they were unable to form treaties or to agree to any cessation of hostilities. Besides the House declared itself unwilling to enter into any negotiations with Pennsylvania because of the "intensity of rancor" which it was claimed the latter had exhibited towards Maryland. Indeed the whole mission was declared to be useless, since the desire of the Southern Confederacy to cease hostilities was very evident; while the determination of the United States Gov-

ernment to attempt to force the members of the former was as well known. The relations between the Senate and House became quite strained, but soon a joint committee from the two houses came to an agreement, by which no commissioners were sent to Virginia or Pennsylvania, but four to Lincoln and the same number to Davis.

It had been quite generally believed, from the previous utterances of the Legislature, that the recognition of the Southern Confederacy would be advocated; but the declaration against the calling of a convention was somewhat of a surprise—had it come a week or two earlier, it would have been much more surprising. But a change had gradually been coming about in affairs generally throughout the state. The Legislature had been assembled in answer to the demand that Maryland should be allowed to act through her constituted authorities. A large majority of the members of the Legislature had met with the intention of taking definite action in some way, but the consideration as to how this was to be done had given rise to long and even fruitless discussion. Even the proposal to allow the people of the state to decide by means of an election of members to a state convention had been declared infeasible, though for months a constant demand for a convention had been made by a large element in the state. One of the newspapers stated the opinions of the radical Union party when it declared that a convention had not been called because the members of the Legislature realized that the people would elect delegates of strongly Union views.<sup>20</sup> However this may be, certainly other reasons also had an influence upon the members of the Legislature in inducing them to come to a decision not to call a convention.

The so-called "Liberty Bill" had met an ignominious death, little lamented even by its advocates. A third

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<sup>20</sup> Baltimore American, May 9, 1861.

measure which was suggested as a means by which the state could take some definite action was the proposal to arm the state militia. Resolutions having this end in view were introduced at various times into the Legislature; but that body finally decided that such an attempt would be inexpedient at the time.

The Legislature, though it had met to consider and to adopt measures which would secure the welfare of the state, had really done nothing beyond protesting against the policy of the Federal Administration. That Assembly, however much the nature of its resolutions may be condemned or approved of, should not be charged with an intention to waste time. The majority of the members of that body, holding the views that they did, found themselves unable to act otherwise. The rapid course of events was constantly rendering more imperative either a policy of inaction, or an endorsement of the Federal Administration. The latter the Legislature most assuredly would not give. It is therefore advisable to notice the trend of events which had brought about this condition.

The inevitable reaction which follows every outbreak of violence was very marked after the disorders in Baltimore. Hardly a week had elapsed from April 19, before a change in feelings, as far as expressed, was perceptible. How far this result was due to the facts that the Union sentiment had held itself in abeyance on that day; how far to the "sober second thought" and to a clearer realization of the misery and bloodshed which a war necessarily entailed; and how far the radical pro-southern element was overawed, and the "Union" adherents encouraged by the nearness of armed forces of the United States Government, are questions which are not easily answered. The fact remains that the radical Union party constantly increased in strength and boldness. Newspapers which had given a very lukewarm support to the Federal Administration, became more pronounced in its advocacy. One paper which had always been strongly pro-southern, and

which, just after April 19, had condemned Hicks for not having called the Legislature together so that steps might have been taken to avoid the outbreaks of that day, and had declared that there existed an urgent necessity for calling a state convention to decide Maryland's policy, later advocated a passive course. It held that if the state should decide to withdraw from the Union, it was best to wait until the war was over, when such action could be taken without placing the property and lives of the citizens of the state in jeopardy. For the present, Maryland should remain neutral. It would be madness to attack the Northern states; while hostile action towards the Southern states should be avoided, since it was very probable that on some not distant day, Maryland would unite with them. A few days later the paper still advocated a convention, but only with the modifying provision, of questionable constitutionality, that the Legislature in calling the convention should stipulate that no ordinance of secession should be passed as long as Washington should be the capital of the United States. The prediction was added that the removal of the seat of government from Washington would not occur in the lifetime of the present inhabitants of the state nor of their immediate posterity. This lumbering statement can mean little else than an expression of opposition to Maryland's leaving the Union at any time.

On May 1, the United States flag was<sup>a</sup> hoisted at the custom house in Baltimore. A Union convention met on May 2, and decided to adjourn until May 23, to give the members from the counties opportunity to attend.<sup>a</sup> Mass-meetings were held which condemned the proposed "Safety Bill" and expressed approval of the Federal Government. On May 6, General Trimble issued

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<sup>a</sup> Baltimore American and Sun, etc., May 2, 1861.

<sup>a</sup> Baltimore American, May 3; Baltimore Sun, May 6; Clipper, May 8.

an order disbanding the local guards which had been organized on, and shortly after, April 19.<sup>22</sup> Mayor Brown in a communication to the City Council of Baltimore expressed the opinion that the people of Maryland had decided to submit to the Federal Government.<sup>23</sup> He therefore advised the City Council to request the Legislature to repair the railroad bridges.<sup>24</sup> Within a week's time he withdrew the order forbidding the display of any flags in the city. The bridges were eventually repaired, after the refusal of the Legislature to do so, and by the middle of May, traffic over the roads went on.

Governor Hicks had not been in personal consultation with Lincoln or members of his Cabinet since April 17, when he had attempted to impress upon them the general unwillingness of the people of Maryland to aid in coercing the Southern states; but his correspondence with Washington during the following two weeks is quite large. Though he had opposed the occupation of Annapolis by Federal troops, he soon realized that the passage by way of that city was the course which was the least likely to arouse opposition from the radical pro-southern element in the state. The decidedly unfriendly tone which the Maryland Legislature adopted towards the United States Government at its convening, together with hostile utterances of the newspapers of the North, led Hicks to believe that attempts would be made by the Federal administration, or more probably by volunteer companies from the North on the way to Washington, to force a way through the streets of Baltimore. On April 30, while in Frederick, Hicks wrote to Scott urging him to prevent such steps being taken.<sup>25</sup> The next day Reverdy Johnson went to Washington bearing a letter from Hicks, in which the

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<sup>22</sup> Baltimore American, May 7; Baltimore Sun, May 7.

<sup>23</sup> Baltimore American, May 8; Baltimore Sun, May 8.

<sup>24</sup> Baltimore American, May 8; Baltimore Sun, May 8.

<sup>25</sup> Letter to Scott is to be found in the Letter Book of the Executive.

latter obligated himself in advance to agree to any terms which Johnson should make.\* Both of these letters indicate that whatever of indecision had existed in Hicks' mind as to what should be his attitude towards the United States Government, was now gone; and his intention to support the Federal administration was unmistakably manifested. The letters also show Hicks' belief that a great change was coming over public feeling; and that as a consequence, the sentiment would soon be almost unanimously in favor of the Union. Yet he realized that any exercise of force in Maryland would abruptly stop the movement which had set in. Therefore, he urged that Maryland be let alone entirely for a while. In the present case, he never denied the right of the United States to pass troops through Maryland, but simply declared that such an action was ill-timed and would tend to prolong and intensify the disturbances which then existed in the state. Whether his policy is justifiable or not on ethical grounds, it was certainly the one, under the circumstances, which was most conducive to the restoration of order in the state; and to his influence with the Administration during the following month, is largely due the securing for Maryland even of the small measures of independence of action which was left to her.

The strained relations which had existed between Hicks and the Legislature during the year previous have been touched upon. After that period the members of the dominant party in the Legislature had unsparingly condemned Hicks for not having called a special session. With these facts in view, it is not surprising that little coöperation

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\* Letter is to be found in the Letter Book of the Executive.

Reverdy Johnson had been very active in his efforts to secure from Lincoln a cessation of hostilities. The latter had once gone so far as to say in a confidential letter of April 24 to Johnson: "I have no objection to saying a thousand times that I have no purpose to invade Virginia, nor any other state, but I do not mean to let them invade us without striking back."—Nicolay and Hay: Abraham Lincoln, volume ii, p. 37.



between the executive and legislative departments of government took place at this time. The Legislature had hardly assembled before a collision came on the questions of military affairs. During the excitement on April 19, Hicks had consented to call out the military companies of Baltimore; but he later became of the opinion that the formation of local guards throughout the state was inadvisable; since, he declared, the larger number of the members of these companies wanted to go into the service of the Confederacy, and were only holding back in the hopes that Maryland would secede. On April 29, Hicks issued a proclamation "warning all persons from enlisting on military service within the state without complying with the conditions imposed by law," etc. Hicks based the justification for his action on the ground that these military companies are "subversive of good order, and in the present excited condition of the public mind, are well calculated to imperil the public peace."<sup>77</sup> On May 6, Hicks issued a proclamation declaring that the commission of Tench Tilghman, who had been appointed Major of the 2nd Division of Maryland militia, was invalid because of the failure of Tilghman to comply with certain provisions of the law.<sup>78</sup> This order aroused considerable adverse criticism from the pro-southern element, since it was believed to have been done as the first step in the placing of the control of the state militia in the hands of those who were in sympathy with the Federal administration. The House of Delegates soon took an occasion to express its disapproval of these acts of Hicks, and declared that the charge against Tilghman was based only upon the flimsiest of pretexts; and thereupon voted to make valid his commission.<sup>79</sup>

The sessions of the Legislature were held in a strong-

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<sup>77</sup> Baltimore Sun, May 2, 1861; Baltimore American, May 1, 1861.

<sup>78</sup> Baltimore American, May 8, 1861.

<sup>79</sup> Journal of House of Delegates, p. 128; Journal of Senate of June 20, p. 236.

hold of the "Union" party; nevertheless Hicks was by no means freed from possible danger while in Frederick. If well-matured plots against his life and liberty did not exist, certainly much talk to that effect, as hitherto, was rife. An interesting story is told by a writer, who was prominent at that time as a radical sympathizer with the Confederacy, of a plan, in which he was to be a principal, to ride into Frederick with a detachment of soldiers, seize Hicks and carry him to Virginia, hoping thereby to give the Anti-Administration party in Maryland free rein. The design was communicated to the members of the Legislature unofficially, but they showed such vigorous opposition that the scheme was dropped.<sup>a</sup>

On May 5, Butler, in obedience to an order from Scott on the preceding day, took possession of Relay, only a few miles from Baltimore, and the occupation of the latter soon followed.<sup>a</sup> During the night of May 13, Butler quietly entered Baltimore. Less than a month before, the streets of the city had been crowded with great masses of men, forcibly resisting the passage of troops to Washington. But at this time, little or no opposition was offered, though the United States soldiers came to take possession of the city. This is largely to be accounted for by the fact that the entrance was effected almost before any opposition could have taken place; but also a change in feeling had come about in Baltimore, and violent opposition to the Federal administration had largely given away to an appearance of apathy. Butler immediately issued an ordinance which practically put the city under martial law.

As soon as Scott had heard of the occupation of Baltimore, he censured Butler severely.<sup>a</sup> It seems probable however that the rebuke was called forth from the Admin-

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<sup>a</sup> Military History of the Confederacy, Volume on Maryland, pp. 36-37, by Bradley T. Johnson.

<sup>a</sup> War of Rebellion, series i, volume ii, p. 620.

<sup>a</sup> War of Rebellion, series i, volume ii, p. 28.

Butler was soon removed from the command in Baltimore.

istration more because Butler had dared to take the step without positive orders, than that the cabinet was adverse to seeing Baltimore seized by the army of the United States. Indeed, the fact can be shown clearly that the occupation of Baltimore had been considered for some time by Lincoln and the War Department. As early as April 29, Cameron had accused the authorities of Baltimore of bad faith, and declared that the necessity existed of occupying the city.<sup>40</sup> On the next day Scott wrote that "the next step will be by force to occupy Baltimore."<sup>41</sup> The proposed attack as outlined by Scott was to be made by forces coming from four points and meeting at the same time before the city. One force was to come from Relay; a second from York, Pa.; a third from Havre de Grace; a fourth from Annapolis by water. In the conclusion of the letter giving a detailed account of the plans, Scott wrote: "Nothing shall prevent the occupation of Baltimore by a competent force but the voluntary reopening of free communications by rail and wires through Baltimore and Maryland before our preparations are ready."<sup>42</sup> Connection between Washington and the North, by way only of Annapolis and Havre de Grace, by water, was looked upon by the Administration as needlessly long, circuitous, inconvenient, liable to serious derangement, and on the whole inconsistent with the dignity of the United States Government. On May 3, Cameron declared that the "Administration cannot afford to temporize with Baltimore." "They (the people of Baltimore and of Maryland at large), must agree to restore the property they have destroyed, and make reparation for damages, before we can open communication by their city. They must also agree that the Federal Government shall have the absolute right to move troops through their city or to quarter them in any part of the state." On May 4, Scott decided that

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<sup>40</sup> War of Rebellion, series i, volume ii, p. 604. <sup>41</sup> Ibid., p. 607.

<sup>42</sup> War of Rebellion, series i, volume ii, p. 607. <sup>43</sup> Ibid., p. 618.

it was advisable to increase the forces which were to make the attack upon Baltimore. Butler was ordered to move up to Relay and concerted action between Butler, Commander of the Annapolis Department, and Patterson, Commander of the Pennsylvania Department, was insisted upon.<sup>a</sup> Scott again and again urged that operations should begin, but Patterson delayed the carrying out of the plans on the ground that his troops were not adequately equipped.<sup>b</sup> At this juncture, Scott was led to believe that the authorities of Baltimore would not oppose the passage of troops through the city, and indeed would offer protection to them. Thereupon he deferred indefinitely the attack on the city and ordered Butler to retire from Relay.<sup>c</sup> Mayor Brown in a message to the City Council had set forward the inadvisability of offering any open resistance to the operations of the United States Government; and the public at large actuated by this and other reasons, seems to have decided upon such a course of action, for on May 9 United States troops passed unmolested through Baltimore.<sup>d</sup>

The Administration had realized the necessity of having Baltimore under its control, not only because the hostile elements therein constituted a constant menace to Washington, but also because a clear route to the North was imperative; and had decided to adopt vigorous measures to secure this end. The only thing which prevented Baltimore, near the end of April or in the early part of May, from being surrounded by four divisions of United States troops for the purpose of being carried by storm, was the unwillingness of Patterson to take the field at the time. In view of the excitement prevailing in the city, and the vigorous preparations for defense which were going on, it is quite probable that resistance would have been

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<sup>a</sup> Ibid., p. 620.

<sup>b</sup> War of Rebellion, series i, volume ii, 622-628. <sup>c</sup> Ibid., 627.

<sup>d</sup> Baltimore Sun, May 8; Baltimore American, May 8; *ibid.*, May 10.

offered to the United States forces. Had Baltimore been fired upon, it is possible that the Legislature would have been swept along by the upheaval of public sentiment in taking steps looking towards secession.<sup>a</sup>

Just before the occupation of Baltimore, a fear grew up in Frederick that a large body of men were coming from the former to sustain the Legislature, which was rumored to be on the eve of adopting measures favorable to secession.<sup>b</sup> The danger was felt to be so great that Hicks called out the militia forces available, under General Shriver, and the Judge of the Court of Frederick county sent to Butler for assistance.<sup>c</sup> The situation in Frederick undoubtedly had much to do with influencing Butler to seize Baltimore. It is not clear whether Hicks advocated such a movement, or even knew of it in advance; still he was in close communication with the Federal administration by this time, though not yet altogether in sympathy with the coercion policy being carried out.

The occupation of Baltimore took place when the Legislature was on the eve of adjournment. The House and Senate after having come almost to an open breach on some questions, were agreed that it was useless to attempt to offer any active opposition to the policy of the United States Government as evidently planned for Maryland and the Southern states generally. Annapolis and Baltimore were occupied by United States troops, and the state as a whole was under the watchful surveillance of the Federal administration. The strength of the unconditional Union party in the western part of the state had been

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<sup>a</sup> Butler expressed great indignation at his treatment by Scott, and tried to justify his course upon the ground that Baltimore, because of its size and the unfriendly spirit it had exhibited towards the United States Government, was a constant source of trouble. Lincoln soon afterwards made Butler a Major-General.

<sup>b</sup> During the last days of this session of the Legislature, the feeling in that body towards the United States Government seemed to have been much more hostile than previously.

<sup>c</sup> War of Rebellion, series i, volume vii, p. 630.

shown by the municipal election in Cumberland, and the election of Fiery of Washington county, to fill a vacancy in the Legislature, almost without opposition.<sup>44</sup> The members of the Legislature realized that they were unable to cause Lincoln to change his policy in regard to Maryland, yet they were not willing to leave the control of state affairs entirely in the hands of Hicks. They believed, with much reason, that he would be adverse to summoning again in special session that body which held and expressed views so contrary to his own; for by this time the opinion prevailed generally that Hicks was entirely on the side of the Federal administration, though he still seems to have thought that the state could remain practically neutral.<sup>45</sup> The Legislature declared that the supreme welfare of Maryland was in jeopardy, and therefore decided that it was necessary for it to meet from time to time, as the occasions should demand, so as to be in readiness to protect as far as possible the interests of the state. The adjournment was to last until June 4. Ever since the Legislature had been in session much dissatisfaction had been expressed by a number of its members, that Frederick and not Annapolis should be the place of meeting. Propositions were offered to reconvene on June 4 in Annapolis, but these were held to be undesirable because of the presence there of United States troops. Baltimore was equally as objectionable to the majority of the members for the same reason. The towns on the Eastern Shore were inconveniently located. Finally Frederick though a stronghold of radical "Union" sentiment, was agreed upon after futile efforts had been made to secure an adjournment *sine die*. These attempts had failed though they were supported by the radical "Union men" and by a number of members of very strong Southern sympathies who were convinced that

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<sup>44</sup> Held May 4, 1861. Vote—Fiery, 3,952; scattering, 132. Journal of House of Delegates, p. 78.

<sup>45</sup> Hicks on May 14 called for volunteers to fill the first quota called for by Lincoln.

the Legislature could do absolutely nothing to stay the hand of Lincoln.

At this day it is not exactly clear what the Legislature hoped to accomplish by deciding to reconvene on June 4. The rather vague and indefinite statements which were made at that day, that the highest organ of government should in times of so great moment and peril, be always ready to act, in view of the circumstances even as understood then, do not explain much. It seems to have been held that, as a last resort, if the oppression of the United States Government should become intolerable, the people of the state, acting through the official organs, could offer resistance. However that may be, the Legislature must have realized that the anti-administration party, if not losing in numbers, was constantly becoming more and more helpless.

On the day of the adjournment of the Legislature, Ross Winans, a member of that body from Baltimore, was arrested by an officer of the United States army, acting without a writ from a civil magistrate. Hicks who was on the same train tried in vain to secure the release of Winans. Shortly afterwards, Winans was released on a promise not to extend assistance to the Confederacy. This arrest was bitterly criticised.

On May 14, after nearly a month of hesitation, Hicks issued a call for four regiments to make up the quota of Maryland as fixed by the proclamation of Lincoln on April 15. John R. Kenley was empowered by Hicks to take charge of these regiments.<sup>22</sup> Hicks still seemed to have an idea that a neutral position was possible for Maryland—at least in a measure so—for in his proclamation, he declared that the troops were not to be sent outside of Maryland and the District of Columbia. Cameron promptly refused to accept this offer of troops on the grounds that volunteers for three months were not de-

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<sup>22</sup> Letter Book of the Executive, May 14.

sired."<sup>17</sup> Lincoln had shortly before sent out a second call for troops who were to serve three years. However recruiting stations were set up in Baltimore, Frederick, and other places, and no great difficulty was experienced in obtaining volunteers.<sup>18</sup>

These facts clearly mark the end of the struggle of Maryland through her official organs against the United States Government, and the beginning of that period when the state, partly through force, and partly through inclination, is found actively supporting the policy of the Federal administration. Concerted opposition to the United States Government was rendered almost impossible; and thenceforward the latter had to deal with individual cases almost entirely. After months of uncertainty, confusion and tumult, Hicks very materially aided by the Federal administration, had outplayed his opponents and was winning steadily.

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<sup>17</sup> Letter Book of the Executive, May 17.

<sup>18</sup> Subsequently throughout the war, Maryland nearly filled the quotas demanded.



## CHAPTER IX.

### RUPTURE BETWEEN HICKS AND THE LEGISLATURE.

Hicks now made very apparent his intention to lend active assistance to the United States Government. That hesitation under which he had previously labored, seems to have left him entirely; and his course was henceforth almost completely free from those vacillations which at times were perhaps more apparent than real, and not so serious as often claimed, yet which for a time, had kept Lincoln, and, in fact, the people of the North generally, in a state of apprehension.

If any doubt existed as to the position of Hicks, it had adequate ground for removal by the appearance of the following order:

STATE OF MARYLAND,  
ANNAPOLIS, May 30, 1861.

TO COL. E. R. PETHERBRIDGE:

*Sir:* You are hereby directed to collect immediately all arms and accoutrements belonging to the State of Maryland and hold the same in safe keeping subject to my order.

THOS. H. HICKS,  
Governor of Maryland.<sup>1</sup>

Hicks followed up this order by a proclamation calling upon the people of Maryland to deliver state arms in their possession to Colonel Petherbridge.<sup>2</sup> The importance of this step is evident when it is realized that the companies throughout the state which were affected by this order

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<sup>1</sup> Letter Book of the Executive.

<sup>2</sup> Moore's Rebellion Record, volume i, pp. 347-8.

were, in the main, in sympathy with the Confederacy. Hicks asserted that the existence of military companies was a constant source of unrest in the state, and therefore he had decided to collect the arms belonging to the state. The order was gradually carried out, though not without much opposition in some places. By the law of 1860, two armories had been provided for; one at Easton and the other at Frederick, which were to serve as headquarters from which the arms were to be distributed. Hicks did not stop at merely collecting the arms, but removed those in Easton to Fort McHenry, and distributed a part of those in Frederick among local companies or associations of citizens who had joined together in a somewhat irregular manner in forming organizations for the protection of the city.\*

Whether the order had for its primary object the removal of a cause of disturbances, or was designed to prevent any united opposition from being offered to the Federal Administration in the state, the measure was bitterly criticised. On June 5, the day after the Legislature reconvened, the Senate passed a resolution calling upon Hicks to give his reasons for his policy in this respect, and what securities he had that the arms would be given up by the United States Government on the demand for the same by the authorities of the state.<sup>4</sup> Hicks in reply denied the right of the Senate to ask these questions, but expressed his willingness to give the information desired. The arms were collected, he stated, since they were being carried outside of the state to aid "those persons now in rebellion against the United States Government." Fort McHenry was chosen as the place of depository on grounds of prudence, since arms had been stolen from the state arsenal in Baltimore. He added by way of conclusion: "The security I have for the restoration of said arms when

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\* House Documents of 1861, Document I.

<sup>4</sup> Journal of the Senate, p. 143.

demanding by the proper authorities of the state lies in the honor of the United States Government, and its loyal officers. I should have deemed it absurd and insulting to have required any other security." \* The letter of Hicks only served to increase the estrangement between himself and the Legislature, which had long existed, and consequently their relations towards each other for the rest of the session were characterized by an absolute lack of coöperation. Recent events had shown Hicks to be engaged in actively assisting the Federal Administration in its efforts to secure the assistance of Maryland in the war. What the Legislature had lost in power it made up in the bitterness with which it criticised and condemned the acts of Hicks and Lincoln, which acts it was powerless to prevent. Hicks looked upon the situation as a triumph for himself. He claimed to believe that his course was approved of by his constituents, and moreover he was assured of the strong arm of the United States Government to assist him in carrying out his plans. From the Legislature he needed no longer to fear any serious check, and subsequently his attitude to that body was that of only slightly disguised contempt and defiance.

With these considerations in mind, the position taken by the Senate is better understood. On June 21, that body by a vote of twelve to four vigorously denounced Hicks, calling the collection of arms a "palpable usurpation of authority," and styling Hicks a "military despot." The Senate declared that "it is the imperative duty of the Legislature to make a direct issue with the Governor of the powers thus claimed, and to confine him to the exercise of the powers and duties confided to him by the constitution and the laws." \* Hicks was requested to return the arms to the military companies from which they had been collected. It is hardly necessary to add that the "request" was not granted.

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\* Journal of Senate, p. 152.    \* Journal of the Senate, pp. 251-4.

The law providing for the distribution of arms, etc., to military companies had required that the captains of these companies should give bond to the state for the safe keeping and return of these arms. Hicks had justified his course in collecting the arms on the grounds that not only were they being put to "treasonable" use by being sent to the South, but that also the State of Maryland was continually incurring financial loss thereby. The Legislature tried to protect the captains of those companies, which by accident or design had parted with arms received from the state, by passing a law that no actions should be taken against the bonds of these officers.<sup>1</sup> The act was remedial in effect. With due allowance made for a belief by the Legislature that the officers should not be held responsible for acts of individual members of the companies who had availed themselves of the general excitement to send or to carry arms belonging to the state to the South, yet the law passed by the Legislature can hardly be regarded as other than an indirect attempt to assist the cause of the Confederacy.

The House of Delegates came to a breach with Hicks even sooner than did the Senate. On June 5, Hicks, in response to a resolution of the House, sent the following letter:<sup>2</sup>

EXECUTIVE CHAMBER,  
FREDERICK CITY, June 5, 1861.

GENTLEMEN OF THE HOUSE OF DELEGATES:

In response to your order of this date, requesting me "to furnish you, without delay, copies of all correspondence which may have taken place between myself and any officer or officers of the General Government since the 4th of March last," I have to say that I have already furnished your honorable body with copies of all correspondence between myself and officers of the General Government which I deem it necessary to lay before you.

THOS. H. HICKS.

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<sup>1</sup> Senate Journal, p. 264. <sup>2</sup> Journal of House of Delegates, p. 182.

The abrupt tone of this note was not of a nature to remove the impression prevailing among members of the House of Delegates that Hicks had long been in active though secret coöperation with the Federal administration, and had been privy to the plans of those operations which were rendering constantly the state less able to oppose in any way the United States Government. A committee was then appointed to examine the records in the office of the Secretary of State of Maryland, and to find out the exact relations which had existed since March 4, 1861, between the Executive Department of the state and the General Government.<sup>9</sup> Several days later, Hicks sent a letter to the House of Delegates in which he accused that body of deliberately insulting him.<sup>10</sup> He declared that he had voluntarily given the Legislature a full account of the correspondence with the General Government, though he was under no obligation to do so.<sup>11</sup> However, he was willing to give the committee free access to the executive records. The investigation led to only a few important disclosures, since the correspondence of Hicks was seldom placed in the record books.<sup>12</sup>

The arresting of civilians by military agents of the General Government, acting without the coöperation of the civil authorities, was considered for some time before put into operation. The suspension in Maryland of the writ of habeas corpus had been recommended as an extreme measure by Lincoln in a letter to Scott as early as April

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<sup>9</sup> Committee consisted of Pitts, Mills and Compton. *Journal of House*, p. 244.

<sup>10</sup> *Journal of House of Delegates*, p. 266.

<sup>11</sup> Article II, Section 23 of the Constitution (1851) gave either branch of the Legislature the right at any time to inspect the "record of all official acts and proceedings." Hicks was undoubtedly wrong in his position.

<sup>12</sup> The records of the preceding months were, as a rule, not copied in the regular books at this time, and were therefore more or less inaccessible.

Letter of J. R. Partridge, Secretary of State, to Hicks, June, 1861 (MS.).

25;" and the latter, the following day, apprised Butler of this proposed step." On April 27, Lincoln formally empowered Scott to suspend, whenever he (Scott) should deem it necessary, the writ of habeas corpus anywhere on or in the vicinity of any military line between Washington and Philadelphia." The refusal of General Cadwallader to obey a writ issued by Chief Justice Taney for the relief of John Merryman, and the subsequent events in this famous case are well known.

The introduction of this phase of military rule aroused great opposition not only in Maryland, but in other parts of the Union where enforced. The House of Delegates on reassembling on June 4, inquired of Hicks what he had done "to protect the citizens of the state" from the arrests by the armed forces of the United States Government." Hicks replied that he had received neither any "official information" of such arrests, nor any complaints from persons so arrested, consequently he had taken no action whatever." The House retorted that he hardly needed to be "officially" informed of acts which had attracted the attention of the whole country, and had called forth an elaborate opinion from the Chief Justice of the United States. Hicks was also reminded that only a few months before he had deemed rumors and anonymous letters to be of sufficient importance as to engage his careful consideration. The resolutions adopted by the House of Delegates, besides containing a scathing criticism of Hicks, protested against the exercise of military rule in Maryland as being "subversive of the most sacred guarantees of the constitution, and in flagrant violation of the fundamental and most cherished principles of American free government." Hicks' position that the lack of official notifica-

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<sup>18</sup> Nicolay and Hay: Works of Lincoln, volume ii, p. 38.

<sup>19</sup> War of Rebellion, series i, volume ii, p. 601.

<sup>20</sup> Nicolay and Hay: Works of Lincoln, volume ii, p. 39.

<sup>21</sup> Journal of House of Delegates, p. 170.

<sup>22</sup> Ibid., p. 183.

<sup>23</sup> House Documents of 1861, Document H.

tion precluded any action on his part was hardly tenable, and his declaration seems to have been an attempt at evasion. Certainly the Chief Executive of a state, in a matter of such widespread interest and importance would hardly believe it necessary or even advisable to defer his action, if he intended taking any at all, until he had been formally notified of the facts in the case. At that time he could not have opposed the suspension of the writ because the matter was such a serious one that such a step would have required him to have broken away from the Federal administration. This he was unwilling to do; nor could he with impunity have supported the policy of the latter in face of the almost universal outcry of disapproval in the state.

Just about this time another incident occurred which indicated that Hicks had determined to draw more closely to the Federal administration. He requested Scott to send a detachment of United States troops to occupy Frederick. On the compliance of Scott, Hicks wrote to General Patterson, commanding in Pennsylvania, on June 9, for a detachment of troops. The reasons assigned by Hicks for his request for Federal aid were; first, to guard Frederick from an attack by "rebels at Harpers Ferry," and second, to stop the sending of provisions from Frederick to the South.<sup>19</sup> Patterson after some delay replied, saying "that the people throughout your state, and especially in the vicinity of Frederick, shall have protection as soon as I can extend it consistently with the safety of other important interests confided to me and movements, one object of which is to rid you forever of the parties of whom you complain."<sup>20</sup>

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<sup>19</sup> Letter Book of the Executive.

<sup>20</sup> War of Rebellion, series i, volume ii, 673.

At first Patterson received the messenger of Hicks, Gen. John A. Steiner, somewhat coldly, saying that the people of Maryland had forfeited their right to protection by their conduct on "April 19th" and subsequently. Indeed he refused to take any action until Gen. Steiner should return with an official letter from Hicks. Hence the letter quoted above.

The change which had come about in Hicks' position is well evidenced by the letters to Scott and Patterson. Formerly he had opposed the landing at Annapolis of United States troops which were to pass only through the state to Washington; he had even changed the place of meeting of the Legislature presumably because he wished to avoid any influence being exerted over the deliberations of that body by the presence of a Federal army. Yet now he calls on the United States Government to send troops to take possession of that city, which for the time being was the seat of the state government. Hicks certainly desired the troops of the United States Government in Frederick for the purpose of serving as a check and overawing force upon the Legislature.

Another tilt occurred between Hicks and the House of Delegates over the question of the state arms. A number of these while on their way to a volunteer company in Worcester county were seized by Butler on May 14. Hicks was asked by the House of Delegates if these arms were seized by his authority, where they were at that time, and whether any attempt had been made to secure their recovery. Hicks sharply replied that the first question was impertinent, and for an answer to the second, the Legislature was referred to Butler!<sup>21</sup> The House not to be outdone in a display of acerbity of feeling, promptly returned the message to Hicks.<sup>22</sup>

On June 8, the Senate sent an order to Hicks for a list of the nominations which he had made during the recess of the Legislature.<sup>23</sup> Hicks refused to comply with this request on the grounds that the law requiring him to send nominations did not apply to special sessions.<sup>24</sup> At that time the question was of unusual importance, since the men appointed to positions were assured of their places

<sup>21</sup> June 17, Journal of House of Delegates, 268.

<sup>22</sup> June 18, Journal of House of Delegates, 274.

<sup>23</sup> June 8, Journal of Senate, 165.

<sup>24</sup> June 19, Journal of Senate, 218.



according to Hicks' interpretation until the following winter; while if the Senate could act immediately upon the list of appointments, those nominees who were inclined to favor the Federal Administration would undoubtedly have been rejected. At this time even minor officials were in a position to aid or to impede quite seriously the exercise of jurisdiction by the United States Government. Hicks, however, persisted in refusing to send the list to the Senate."

It is needless to go more at length into accounts of the disputes between Hicks and members of the Legislature, who were now openly at loggerheads. Hicks ignored the Legislature whenever possible, although official relations with that body did not altogether cease at this time.

The attitude of the Legislature toward the United States Government, as might be imagined, became more marked in its hostility, and the expression of friendliness for the Confederacy became more and more pronounced. On May 13, commissioners from both houses had been appointed to see both Lincoln and Davis, and to attempt to secure a cessation of hostilities until Congress should assemble. On June 4, the committee to which was assigned the duty of waiting upon Lincoln obtained its discharge on the grounds that the movement of Federal troops into Virginia, and the active commencement of hostilities had rendered their mission useless." Two weeks later the committee which visited Davis delivered to the Legislature a letter from him in which he expressed his appreciation of the suggestions and expressions of good will sent by the Maryland Legislature, and declared that the Confederacy desired simply to be left alone." The resolutions adopted by the Legislature differ but little from those of the previous sitting, except in being more radical in tone. By

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" The language of the law is not clear, but it would seem as though the Senate had the better argument on its side. Constitution of 1851, Article II, Section 11-14.

" Journal of Senate, 140.

" Journal of Senate, 179.

large majorities in both houses, resolutions were adopted which protested against the suspension of the writ of habeas corpus, military occupation of Maryland, and the war against the Confederacy. The question of the right of a state to secede from the Union came up again in this way. The resolutions as at first prepared had declared that secession was justifiable, not on constitutional, but on revolutionary grounds, and that coercion received no sanction from the constitution. An effort was made to amend this report by substituting a clause which proclaimed secession to be a constitutional right; also an amendment which expressed approval of the coercion policy of the Federal administration was proposed, but both of these attempts were unsuccessful. The result agreed upon was of the nature of a compromise, though the odds were in favor of the former; still it must be admitted that the phraseology of the resolutions is somewhat obscure. It was resolved: "That the right of separation from the Federal Union is a right neither arising under nor prohibited by the Constitution, but a sovereign right independent of the Constitution to be exercised by the several states upon their own responsibility."<sup>22</sup> Senators Pearce and Kennedy were requested to vote for the recognition of the Confederacy by the United States Government, and to present to the United States Senate for record the solemn protest of the Legislature of Maryland "against the manifold usurpations and oppressions of the Federal Government."

An unsuccessful struggle was again carried on to secure an adjournment *sine die*, but it was decided that the Legislature should reconvene on July 30. On June 25, the Legislature adjourned after a session even more nearly devoid of positive legislation than the previous one. Some slight comfort was, however, declared to be derived from the thought that Congress, which would shortly convene, might be able to restore peace.<sup>23</sup>

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<sup>22</sup> Document J of Senate, 1861; Document K of Senate, 1861.

<sup>23</sup> Congress met on July 4, 1861.

Whatever hopes were entertained that Congress on assembling would secure a cessation of hostilities were shattered by the time the Maryland Legislature met on July 30, for the last of its memorable sessions. The energies of the United States Government were being exercised in the promotion of plans for the vigorous prosecution of the war. Baltimore had passed almost entirely under the management of the Federal authorities by the arrest of the police commissioners and Marshal Kane, and by the subsequent placing of the internal government of the city under the actual control, or at least careful surveillance, of the officers of the United States troops stationed there.<sup>20</sup> Memorials from the Police Commissioners under arrest, and from Mayor Brown and the City Council of Baltimore, were presented to the Legislature. Thereupon a joint committee prepared a long report, which was adopted by both houses by large majorities. The resolutions declared that the Government had not proved that the commissioners and Marshal Kane had attempted any armed opposition to the United States Government, and that neither Federal or state authorities had a right to interfere with the organs of the other as long as restricted to their peculiar fields. Some of these persons under arrest were not released until November 27, 1862; and then without ever having been tried, or having a formal presentment of an indictment brought against them. Lincoln, when called upon by the House of Representatives for a statement of the charges against the commissioners, declared that it was "incompatible with the public interest at this time to furnish the information called for by the resolution."<sup>21</sup> Indeed it was only after much heated discussion that the United States Senate consented to the printing on the Congressional records of the resolutions of the Maryland Legislature. No positive incriminating evidence was found against the

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<sup>20</sup> Police Commissioners were arrested on July 1, and Marshal Kane on June 27.     <sup>21</sup> War of Rebellion, series ii, vol. i, 631.

police commissioners. However, the impression prevailed at Washington that the city authorities, only because of threats of force by the Federal administration, had consented to the unobstructed passage of troops through the streets to Washington, and if for any reason the United States soldiers should be withdrawn from the city, or very much lessened in numbers, the city would take advantage of the opportunity to cripple communication with the North, and to place Washington in jeopardy. The existence of an unfriendly party in power in the city which in a measure controlled Washington was believed to be a standing menace. Scott was of the opinion that drastic measures were necessary, and that "the blow should be early struck to carry consternation." Thereupon the order for the arrest of Marshal Kane and the police commissioners resulted.<sup>22</sup> Arrests were made freely, searches of both public and private property were conducted in a vigorous manner, which was believed by many to be needlessly vexatious. In a short time the administration of the city was almost entirely under the control of the provost-marshal, and military rule in many places in the state was exercised.<sup>23</sup>

The members of the Legislature on reassembling, July 30, realized that any thought of opposition by them to the Federal administration was an idle one. The advocates of an immediate adjournment seemed to have been in a majority as soon as the session began; and but for the delay caused by the consideration of the memorials in regard to the arrest of Kane and the police commissioners, and the resolutions which were framed and adopted in protest against the action of the Federal Administration, the session would have been a very brief one indeed.<sup>24</sup> As it was, at the end of a week an adjournment took place. The

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<sup>22</sup> War of Rebellion, series i, volume ii, 138-156.

<sup>23</sup> The official records of the "War of Rebellion" throw much fresh light upon the subject of the arrests in Maryland. See especially series i, volume ii; series ii, volume i.

<sup>24</sup> Senate Documents of 1861, Document M.

spirit of hostility to the Federal administration was preserved in an intensified degree to the end. As an instance of this, the Senate refused to send to the House resolutions passed by the former on June 7, which provided for the displaying of the United States flag during the session upon the temporary state-house.\* The previous Congress at the close of its session had made a convulsive clutch at compromise by passing a proposed constitutional amendment, which provided that slavery should not be interfered with nor abolished in the slave states by the United States Government. The House of Delegates voted favorably upon the measure on April 30. The Senate had never taken definite action in the matter, and now refused to order a search to be made in the official papers of the Senate for a copy of the proposed amendment.\*\*

Hicks no longer affected to be on even formal relations of amity with the Legislature, for during the short session which was held no intercourse between the two branches of government took place.

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\* July 31, Journal of Senate, 278.

\*\* Journal of Senate, 279.

## CHAPTER X.

### SUPPRESSION OF THE LEGISLATURE.

The Legislature was to have reassembled on September 17, but just before that date many of the members of that body who were unfriendly to the Federal Administration were arrested, and the remainder not being able to obtain a quorum, made no formal attempts to organize. This suppression of the Maryland Legislature by Federal authority had long been considered before it was carried out. Before the Legislature had met for the first time on April 26, the situation in Maryland had been considered by the cabinet.<sup>1</sup> Divergences of opinion existed as to the proper course to be followed. Chase was especially urgent in advising that the Government should prevent any hostile action by the Maryland Legislature by preventing its assembling. Lincoln decided not to interfere with the Legislature until it should take some direct stand against the Union; because in the first place, he held, the United States Government was not justified in arresting the members or in preventing them from assembling, since they had done nothing of a hostile nature; and, second, if arrested, they could not be held permanently, and upon release they would take such action as they desired.<sup>2</sup> However, Scott was instructed by Lincoln to watch the Legislature carefully and to be ready to check any movement against the United States Government.

The question of breaking up the Legislature was frequently agitated in administration circles during the spring

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<sup>1</sup> Nicolay and Hay: Abraham Lincoln, volume iv, 166.

<sup>2</sup> Letter of Lincoln to Scott. Nicolay and Hay: Works of Lincoln, vol. ii, 38

and summer of 1861. The result of the Battle of Bull Run gave rise to apprehensions in Washington that the Legislature would seize the opportunity to take more advanced steps in opposition to the United States Government.<sup>3</sup> Though the administration was in a feverish anxiety to protect Washington by collecting and massing there all available troops, yet it was not deemed advisable to weaken the garrison at Baltimore. But by the time the Legislature had reconvened, on July 30, the administration had recovered from its shock and the bands upon Maryland were more tightly drawn than ever. Many exciting rumors were afloat after the battle of Bull Run. One of these, which acquired some credence, was that Johnston's movement northward after the battle was to coöperate with the Maryland Legislature, which had passed an ordinance of secession in secret session at the previous sitting.<sup>4</sup> Hicks even wrote to Cameron advising him to arm the "Union" men in the state, and so attempt to check the "secessionists," who had taken fresh courage from the defeat of the Federal army.<sup>5</sup>

On September 11, McClellan suggested to Cameron that prominent anti-Administration men in Maryland, including several members of the Legislature, be arrested.<sup>6</sup> Cameron immediately issued orders for the arrest of all the members of the Legislature; or as large a number as would be necessary to insure the failure to pass an ordinance of secession; for he claimed rumor stated that an effort would soon be made to carry Maryland out of the Union.<sup>7</sup> Only a small number of the members of the Legislature appeared in Frederick, and these were mainly of the "Union party"; and therefore the arrests were made in

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<sup>3</sup> Letter of Scott to McClellan, July 21, 1861. War of Rebellion, series i, vol. ii, 749. Dix replaced Banks in command on July 23.

<sup>4</sup> Referred to by a correspondent in a letter to Hicks, etc.

<sup>5</sup> War of Rebellion, series iii, vol. i, 463.

<sup>6</sup> War of Rebellion, series i, vol. v, 193.

<sup>7</sup> War of Rebellion, series ii, vol. i, 678.

various places, especially in Baltimore.<sup>9</sup> During the week following September 11, the men on the proscribed list were gradually placed under confinement, and then sent North for imprisonment.<sup>9</sup> Petitions and letters immediately began to pour in upon the Federal Administration urging the release of the prisoners. As a rule those who were held to be but slightly dangerous because of their inferiority of influence or ability, or were less pronounced in their opposition to the United States Government, were soon given an opportunity of being released upon taking the oath of allegiance. General Dix, indeed, was opposed to releasing any of the prisoners until after the November elections. A number, however, refused to take advantage of the offer, since such an action on their part would seem to admit the legality of their arrest;<sup>10</sup> while of course some were not willing to take the oath of allegiance under any circumstances. On November 26, 1862, an order was issued by the United States Government for the unconditional release of Maryland "state prisoners." On the following day those still in confinement at Fort Warren, Boston Harbor, were set free.<sup>11</sup>

So ended in this informal manner the exciting sessions

<sup>9</sup> War of Rebellion, series ii, vol. i, 684. Letter of General Banks to R. B. Marcy, Chief of Staff.

<sup>9</sup> General Banks had planned to carry out the instructions in an imposing manner. Officers of the United States army were to appear at the same time before both houses of the Legislature while in session and to order the arrest of the members in their seats. The failure of the Legislature to convene necessitated a less dramatic, though as effectual, method of procedure. Twenty-nine members of the Legislature were arrested at this time. Besides these, one, Senator McKaig, of Allegany county, had been arrested before and then released on parole. Ross Winans had also been arrested on May 14 and released. A number of the members of the Legislature had left the state. As for instance, Senator Yellott, of Baltimore, had gone to Virginia, and Delegate Brune, also of Baltimore, had left for Canada. War of Rebellion, series ii, vol. i, 667-679, 681.

<sup>10</sup> War of Rebellion, series ii, vol. i, 740-748.

<sup>11</sup> War of Rebellion, series ii, vol. i, 748.



of the Legislature of 1861, often known as the "Rebel Legislature." Whatever may have been the desires of some of the members of the Legislature, or even of the majority of them, certainly that body had made no direct efforts to break away from the Union. Indeed it had declared its inability to pass an ordinance of secession, and also had eventually decided not to call a state convention to determine whether or not the people of the state wished a separation from the Federal Union. However, the Legislature by resolutions expressed repeatedly a desire for the recognition of the Southern Confederacy, and did not hesitate to use very strong language in condemning the policy of the Administration, both as applied to Maryland and to the states adopting secession. The Legislature had been regarded by the Federal administration and by the members of the radical wing of the Union party with mingled feelings of apprehension and contempt. The opinion was held by both Lincoln and Davis that the Legislature of Maryland desired an opportunity to take steps looking towards placing Maryland in direct alliance or union with the Confederacy. Lincoln was ready by force of arms to check any decided movement against the Union by the Legislature, and this the latter realized. There can be no doubt that a majority of the members of the Maryland Legislature desired to see that body take a more advanced position of friendliness to the Confederacy than was really done; yet it is by no means certain that the larger part of those members just mentioned wished to see the state break away from the Union. A number of the leaders of the pro-southern party in both houses repeatedly declared that no such intention was entertained by them. However, a number certainly desired immediate secession, while others looked forward to separation in the future.

As far as positive legislation is concerned, the series of the stormy sessions of 1861 were almost entirely devoid of result. The Legislature could not do what it wanted to, and would not do what it could, hence the record was

practically barren. The numerous resolutions passed express most eloquently a feeling of protest against coercion by the United States Government, and against the enormous development of the authority of the latter, resulting from a vigorous application of principles of "war" and "implied powers." Whatever may be the correct way of regarding these resolutions, whether as treasonable in opposing the course of the Federal Administration and in expressing sympathy for its opponents, or as patriotic in insisting upon a so-called rigid adherence to the Constitutions of Maryland and of the United States, the lucidity as well as the boldness—approaching indeed to rashness—with which they are expressed, are alike noteworthy.

The arrests which had been made, the suspension of some of the newspapers and the establishment of a real, if not nominal, censorship over the remainder, and the breaking up of the Legislature by order of Lincoln, nearly completed the placing of Maryland under the direct control of the Federal Administration.<sup>13</sup> Hicks gave an unqualified endorsement of the action of the administration in this matter,<sup>14</sup> and advised Banks<sup>15</sup> shortly afterwards to be

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<sup>13</sup> William Price wrote on September 25, 1861, to Reverdy Johnson, that the "rebel sentiment was cowed." *War of Rebellion*, series ii, vol. i, 599.

<sup>14</sup> Hicks had been very desirous of seeing the Legislature either broken up or its powers destroyed. As an instance, in July, 1861, he wrote to Reverdy Johnson asking him if the adjournment from time to time of the Legislature was not illegal, and consequently its acts passed at all except the first session void. Reverdy Johnson in an elaborate opinion held that the Legislature in both cases acted within its prerogatives. Correspondence and opinion is in manuscript.

<sup>15</sup> State of Maryland, Executive Chamber.

Maj. Gen. N. P. Banks.

Annapolis, Sept. 20.

Dear Sir:—We have some of the product of your order here in the persons of some eight or ten members of the State Legislature soon, I learn, to depart for healthy quarters. We see the good fruit already produced by the arrests. We can no longer mince matters with these desperate people. I concur in all you have done.

With great respect, your obedient servant,

THOS. H. HICKS.

*War of Rebellion*, series ii, vol. i, p. 685.

very cautious in recommending the release of the members of the Legislature under arrest." He subsequently wrote to Seward to the same effect.<sup>12</sup>

On February 28, 1863, in his first formal speech in the United States Senate, Hicks took occasion to commend emphatically the suspension of the writ of habeas corpus in Maryland in 1861, and the arrests which resulted. He declared that the only criticism he would pass upon the United States Government in this matter was "that some of the rascals had been let go."<sup>13</sup> He said he was willing to have exonerated Lincoln if he had hanged "forty of them." This assertion called forth a sarcastic reflection from a fellow-senator that Hicks, because of the sentiments expressed by him in the well-known "Webster Letter," would undoubtedly have been assigned a front seat in the ranks of the "illustrious forty."

During the latter part of 1861, Hicks was very active in affording assistance to the Federal Administration. He was consulted at times by military commanders in Maryland in regard to the measures adopted for crushing out opposition in the state. His correspondence shows him to have been engaged, as early as August, in planning for, and ordering in some cases, the arrests of persons suspected of being engaged in affording assistance to the Confederacy.<sup>14</sup> He was particularly urgent in advising that the free communications of the latter with the Eastern Shore should be cut off. This section of the state, because of its comparative isolation, was at first but little under the supervision and control of the United States Government,

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<sup>12</sup> Letter of Hicks to Banks, October 2, 1861. War of Rebellion, series ii, vol. i, 693.

<sup>13</sup> Letter of Hicks to Seward. War of Rebellion, series ii, vol. i, 704.

<sup>14</sup> Congressional Globe, 1862-63. Part ii, p. 1373.

<sup>15</sup> Letter of Hicks to Cameron, August 17, 1861. War of the Rebellion, series i, vol. li, part i, 450. Letter of Hicks to McClellan, August 26, 1861. War of Rebellion, series i, vol. ii, part i, 457. Correspondence with G. W. Howard, Jr. (MS.).

and consequently afforded the agents of the Confederacy good opportunities for transmitting men and supplies to the South. The numerous small rivers and inlets which indent the coast are very suitable for the passing in and out of small boats; while recruits for the Confederacy could easily be sent down the peninsula to the Eastern Shore of Virginia, and from there taken across the Chesapeake Bay." Hicks advised that soldiers be stationed at various places on the Eastern Shore, and that arms be supplied to the "Union" men there." All military companies in that section which were hostile in any way to the United States Government were disarmed as speedily as possible.<sup>19</sup>

The strength of the "Union" vote had been seen in special legislative elections in Washington and Cecil counties in May and in June; and more so in the special congressional election in the state on June 13. On November 6, Augustus C. Bradford, a prominent adherent of the "Union" party was chosen Governor by a large majority over Benjamin Howard. The Federal Administration had put forward great efforts to secure an endorsement at the polls; and indeed the election was held directly under the supervision of the United States Government. The judges of the election were instructed by General Dix "to satisfy themselves as to the qualifications of the voters . . . to put to those who offer to poll such searching questions in regard to residence and citizenship as to detect traitors and without

<sup>19</sup> Letter of Dix to McClellan, October 7, 1861. War of Rebellion, series i, vol. v, 614.

<sup>20</sup> Letter of Hicks to McClellan, August 20, 1861, War of Rebellion, series ii, 457. Dix to Hicks, August 20, 1861, War of Rebellion, series i, vol. v, 572. Dix to McClellan, August 23, 1861, series i, vol. v, 581. Hicks to Cameron, September 3, 1861, series iii, vol. i, 480.

<sup>21</sup> Dix to Lieut.-Gen. Lockwood, Sept. 30, 1861, War of Rebellion, series i, vol. v, 609. Dix to Lieut.-Gen. Lockwood, October 9, War of Rebellion, series i, vol. v, 616. Dix to Lieut.-Gen. Lockwood, October 14, War of Rebellion, series i, vol. v, 620.

any violation of the constitution or laws of Maryland to prevent the pollution of the ballot boxes by their votes.”<sup>22</sup> As a result, besides those persons who sought every opportunity to assist the Confederacy, there were many others who had never allied themselves with this cause, but who, as a result of the general feverishness of the times and the personal animosities thereby engendered, were prevented from voting. Likewise, the number of persons who had fled from the state to enter the Confederate service was quite large by this time.<sup>23</sup> Consequently the election of November 6, 1861, cannot be regarded as even an approximately accurate expression of public sentiment in Maryland. Yet the measures taken by the United States Government, though severe, were not unusually harsh in comparison with those adopted by ruling powers elsewhere in times of intense internal convulsions. The outcome of the elections in Maryland gave such a general feeling of relief to the Federal Administration, that the opinion grew up that some of the closeness with which the state was watched and held could be loosened. Lincoln even drafted a proclamation—never issued, however—which stated such views.<sup>24</sup> Reverdy Johnson and other prominent Union men advocated a similar policy on the ground that circumstances would permit such a relaxation, and that a course of this nature would do much to overcome the feeling of indignation and hostility to the United States Government which was widely prevalent throughout the state.<sup>25</sup>

Maryland had been compelled to coöperate with the United States Government by force of arms. Whatever

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<sup>22</sup> War of Rebellion, series ii, vol. i, 609.

<sup>23</sup> By the authority of the Confederate Secretary of War, a recruiting station had been set up in Baltimore before March 16, 1861. War of Rebellion, series i, vol. i, 276.

<sup>24</sup> Proclamation of Lincoln was found among his state papers. War of Rebellion, series ii, vol. i, 617.

<sup>25</sup> Letter of Reverdy Johnson to Seward, March 12, 1861. War of Rebellion, series ii, vol. i, 704.

may have been the inclination of the majority of the people in the state, certainly nearly all the officials, Hicks being the most conspicuous exception, had been avowedly out of sympathy with Lincoln's course. But now, as a result of the elections, the organs of the state government were placed under the control of men who held contrary views. Hicks looked upon the result as a vindication of his own course, yet he had a feeling that he had not been treated altogether rightly by Lincoln and his advisers. The Administration could not entirely forget that when its perils were greatest, Hicks had refused to come to its assistance, and had almost joined in with those who were seeking openly the success of the Confederacy. Subsequently he had shown his friendship for the Administration in a marked way, but the latter had never taken him entirely into confidence in regard to the plans for repression in Maryland.\* Hicks felt himself slighted, but protested that his devotion to the cause of the Union was not thereby lessened in the slightest."

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\* However, the military commanders in the state had frequently consulted with Hicks in regard to the details connected with the enforcement of the orders of Lincoln and the War Department.

" Letters of Hicks to Seward, November 12, 1861. War of Rebellion, series ii, vol. ii, 704.

## CHAPTER XI.

### THE LEGISLATURE OF 1861-2.

As soon as the result of the election showed that the incoming Legislature would be controlled by the party which was favorable to the Federal Administration, Hicks decided to summon that body in special session to take steps which would pledge unequivocally Maryland's adherence to the Union. The call was issued on November 16, and on December 3, the Legislature met in Annapolis.

Hicks' message at the opening of the session was devoted largely to an attempt at justification of his policy during the preceding twelve months. He endeavored to explain the vacillation in his course on April 19, and subsequently, on the ground that no other course had been possible; since, he claimed, any attempt at open resistance on his part would have led to the adoption of violent measures by the secessionists. The dominant party in the preceding Legislature was freely characterized as a band of "traitors," and the forcible breaking up of the body by the United States Government was endorsed. In this message, as in his previous official utterances, Hicks insisted that not only was his course inherently right, but that it had always been approved of by a majority of the people of the state.

He even went so far as to say that he would have called a sovereign convention in the midst of the agitation, and thereby given an opportunity to the people to have expressed their attachment to the Union, if he had possessed the authority to have done so. All he could have done would have been to have summoned the Legislature, and to have recommended to it, the calling of a convention.

But he declared that he could not trust that body, and "was sure that through some juggle Maryland would be forced to secede." He held that now was the time to counteract, as far as was possible, the work of the preceding Legislature, and to show Maryland's devotion to the Union. He urged that the equipment of the soldiers called for in Maryland's quota, be prepared for amply, and also that the portion of the direct taxes levied by the United States Government be paid promptly.<sup>1</sup>

It is not advisable for the purposes of this paper to follow in detail, or even roughly, the proceedings of this assembly. In general it may be said that this Legislature endeavored to undo, as far as possible, all that the preceding one had done in opposition to the Federal Administration. The measures which had been adopted exonerating from blame the authorities of Baltimore, on and immediately after April 19, were repealed,<sup>2</sup> and \$7000 was appropriated for the families of those members of the Sixth Massachusetts which were killed or disabled in Baltimore at that time.<sup>3</sup> Laws which made valid the qualifications of certain officers in the state militia were repealed.<sup>4</sup> The seat of Coleman Yellott, who had been one of the leaders in the Senate of the radical pro-southern party and who was then in the South, was declared vacant.

The Legislature insisted most strenuously that the war was being urged to restore the Union, and not to interfere with slavery. The proposed constitutional amendment, which during the previous session had passed the House of Delegates only, was ratified. Resolutions which declared devotion to the Union and confidence in Lincoln passed both houses.<sup>5</sup> The House of Delegates, by an almost unanimous vote disagreed with the assertion Jefferson Davis made in a speech in Richmond on February 22.

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<sup>1</sup> House Documents of 1861-62, Document A.

<sup>2</sup> Laws of 1861-62, Article XIII. Passed January 4, 1862.

<sup>3</sup> Laws of 1861-62, Article XCIV. Passed March 5, 1862.

<sup>4</sup> Passed March 7, 1862.

<sup>5</sup> December 19, 1861.



He had said: "Maryland already united to us by hallowed ties and material interests, will when able to speak with an unstifled voice, unite her destiny with the South."<sup>\*</sup> The same body voted an expression of thanks to Wilkes for capturing the "Rebel Commissioners, Mason and Slidell." An opponent of the resolution offered an amendment providing for the sending of a copy of the resolutions to "Her Majesty the Queen of England," but the House ignored the suggestion and the sarcasm contained therein.<sup>†</sup> A very stringent law for the punishment of treason was passed, and arrangements were made to pay the quota of Maryland for the direct tax called for by the United States Government. On March 5, Reverdy Johnson was selected by the Senate and House of Delegates, of which latter body he was a member, as United States Senator for the term beginning March 4, 1863, to succeed Anthony Kennedy. The latter was indeed not a candidate for reelection, and indeed his conservatism and opposition to the doctrine of "implied powers," as interpreted by Lincoln, had made him distasteful to the party in power in Maryland. The Legislature adjourned on December 24 to reassemble for the regular session on the first of January. Thus was ended the fourth sitting of the legislative bodies in Maryland in special session during the year of 1861.

Hicks' message to the Legislature on January 1, congratulates the Legislature upon the work recently done by that body in special session, but contains little of interest on national affairs, and is concerned mainly with questions of finance and public improvements. Just one week later his term as Governor terminated, and Augustus Bradford was installed in his place.

The closing days of Hicks' term must have been a

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<sup>\*</sup> February 26. Introduced by Reverdy Johnson. Journal of House of Delegates, 1861-62, 586.

<sup>†</sup> December 13, 1861, Journal of the House of Delegates, 54.

grateful change after the unrest and turmoil which had characterized the years during which he had been Governor. Besides the bitter hatred and reproach which a considerable proportion of his constituents had shown toward him, he had been engaged in a continual struggle with the Legislature. However, the Legislature which had just come into existence entertained for him the friendliest of feelings, and harmony between the two departments of government was restored after a breach of two years. On the day that his term as Governor expired, the House of Delegates passed resolutions thanking him in its name and the name of the people of Maryland for the "way he had met this solemn crisis in our national affairs," and declaring that he had kept Maryland in the Union. The Senate promptly concurred in the resolutions.

On January 8, 1862, Hicks retired to private life. He had left his position of authority in Maryland with the good wishes of Lincoln and the "Union" people generally throughout the country. Various proposals were brought forward to reward him for his services to the Union in the trying days of '60 and '61. Among these was a suggestion by the New York Tribune that Hicks be appointed Secretary of the Navy to succeed Wells, who was believed to be on the eve of resigning.<sup>a</sup> It had long been rumored that Hicks would be appointed commander of one of the military divisions into which Maryland had been divided.<sup>b</sup> During the summer of 1862, Lincoln offered to him the position of Brigadier-General; and on his acceptance, July 26, he was directed by the Secretary of War to report to Governor Bradford.<sup>c</sup> But Hicks was in bad health at the time and never really entered upon the duties of the position.

During the summer of 1862 an incident occurred which

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<sup>a</sup> Letter from G. W. Jefferson to Hicks, January 17, 1862 (MS.).

<sup>b</sup> Letter from G. W. Jefferson to Hicks, January 17, 1862 (MS.).

Letter from G. W. Howard, Jr., to Hicks, February 26, 1862 (MS.).

<sup>c</sup> Letter from Hicks to Governor Bradford, July 26, 1862 (MS.).

attracted considerable attention. Judge Carmichael, of Queen Anne's county, while sitting on the bench was arrested by officers of the United States army after a vigorous attempt at resistance on his part. Carmichael had been very outspoken in his opposition to the suspension of habeas corpus and other such stringent measures which the Federal administration had adopted in dealing with the people of the State of Maryland. By virtue of his official capacity, he had at numerous times thwarted the carrying out of the plans of the military departments in regard to the measures taken against persons charged with being secessionists. Just at this time the President of the State Senate, H. H. Goldsborough, a strong Union adherent, was about to be tried before Carmichael, but the Federal Administration interfered and arrested the latter on the ground that he was largely responsible for keeping alive on the Eastern Shore the hostile feelings towards the United States Government.<sup>11</sup>

The circumstances under which the arrest was made tended to increase the feeling of discontent and indignation of those who were opposed to the policy of the Federal Administration. Much dissatisfaction was noticeable even among those who were considered as pronounced Union adherents; a feeling resulting from the rigid and arbitrary rule of the local military forces.<sup>12</sup> Indeed the advanced measures which were adopted in dealing with the State of Maryland served to accentuate the bitterness of the southern sympathizers, and to fill with misgivings very many adherents of the "Union party." These continually urged the Administration to restrain its hand and not to subject the "loyal people of Maryland" to such extreme tests of their devotion to the Union by demanding acquiescence and even coöperation in the furtherance of plans which were so repugnant to their ideas of personal liberty.

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<sup>11</sup> War of the Rebellion, series ii, vol. iv, 63.

<sup>12</sup> H. H. Goldsborough, J. Crisfield and other prominent persons expressed themselves quite strongly on this point in their private correspondence.

Hicks, though he was now a firm supporter of Lincoln, was, at this time, on the whole inclined to favor the conservative element in the "Union party." The radical wing had as one of its leaders the brilliant orator, Henry Winter Davis. The severe and apparently fatal illness of Senator Pearce aroused considerable speculation as to his probable successor. Hicks seems to have been agreed upon generally as the logical candidate, if the vacancy should occur. Consequently, upon the death of Senator Pearce, Governor Bradford appointed Hicks, on December 27, 1862, to serve as United States Senator, and he took his seat in the Senate on January 14, 1863. On the whole the career of Hicks in this body was not particularly prominent. He did not possess ability to attract especial attention on the floor, and during the two years in which he was in the Senate, he suffered so much from ill health that slight opportunities were given of demonstrating whether he had the qualities which make a leader either in the committees of the Senate, or in party councils and caucuses.

## CHAPTER XII.

### HICKS IN THE SENATE.

On January 29, Hicks made his first formal address in the Senate, in the course of which he reviewed his record as Governor of Maryland, and attempted to explain the inconsistencies of policy which were claimed to exist there. The speech is interesting as showing how far Hicks' views had changed during the past year on many of the questions of the day. He expressed most emphatically his endorsement of the policy of the Administration in Maryland in regard to the suspension of habeas corpus, the arrests which followed, and other measures deemed advisable by the Federal Administration to keep the unfriendly spirit in the state in check. His colleague from Maryland, Senator Kennedy, took him severely to task for these sentiments, and declared he could see in the policy of the administration only the establishment of a despotism. Kennedy inquired if Hicks approved of the suspension of habeas corpus in 1861 when the entire official machinery of the state was in operation. Hicks' reply is somewhat evasive. He declared, however, that he did not approve of everything Lincoln had done, but on the whole he was glad that the presidential election of 1860 had resulted in the election of Lincoln. Coercion of the seceded states he believed was right, and if the safety of the Union demanded such severe measures, "every rebel, North or South," should be put to death.

The radical nature of the remarks of Hicks, though finding approval on the Republican side of the house, did not fail to call forth from the Senators from the border states criticisms and sarcastic allusions to some of Hicks' pri-

vate and official utterances in 1860 and 1861. On the other hand, Hicks hesitated considerably before following the dominant party in the Senate in regard to slavery. He had always spoken bitterly of abolitionists, and declared as late as August, 1861, that while he was willing to do all he could to assist the Administration in the prosecution of the war, yet if then "the abolitionists don't let our negroes alone, I will fight them."<sup>1</sup> Hicks insisted that all energies should be put forward to restore the Union, and until this was accomplished other problems should, as far as possible, be laid aside. Therefore he was opposed to the consideration of questions of gradual emancipation (involving compensation for the owners), in the border states, declaring that such only served to divide the forces of the Union, and to encourage useless dissensions when the common welfare of the country demanded a united front against secession.

The representatives from Maryland in Congress united with those who were opposed to any interference with the institution of slavery, but the cause proved to be a constantly losing one. Two of the main reasons which operated in producing this effect were that of the advocates of slavery, many had become convinced that its existence would prove to be an insurmountable bar to the restoration of the Union; while very many indeed had been disfranchised, and hence were powerless. Hicks belonged to the former class, and declared that though the loss of his slaves would ruin him, yet if the Union demanded the sacrifice, he was willing to make it. The results of this movement are to be found in the work of the Constitutional Convention of 1864.

Hicks was promptly elected by the Maryland Legislature on its assembling, on January 7, 1864, to fill out the rest of the term of the late Senator Pearce, to which Governor

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<sup>1</sup> Letter of Hicks to McClellan, August 26, 1861. War of Rebellion, series i, vol. ii, part i, 457.

Bradford had appointed him in the recess of the Legislature.<sup>3</sup> From this time on, feeble health prevented him almost entirely from carrying on his official duties.

On June 13, 1864, Hicks made a speech in the Senate, while sitting in his chair.<sup>4</sup> He expressed himself as being heartily in favor of the reelection of Lincoln.<sup>5</sup> Shortly afterwards he declared vehemently that he did not know which would be the greatest evil, the success of the Confederacy or the return to power of the Democratic party.<sup>6</sup> Though Hicks had eventually favored the abolition of slavery in Maryland and had voted<sup>7</sup> for the constitution providing for this, yet he was opposed to any attempts to place the freedman on a plane with his former owner. He was not in favor of the proposed act for a "Freedman's Bureau," claiming that since the negro was free, it was not advisable to place him in an actual, if disguised, form of servitude by putting him under the supervision of so-called "boards of improvement."

On July 2, Hicks made his last remarks on the floor of the United States Senate. During the following autumn and winter petitions were gotten up to urge Lincoln to appoint Hicks collector of customs at Baltimore, but all such plans were finally interrupted by his death on February 13, 1865, at the Metropolitan Hotel in Washington. He had long been in bad health, and an attack of paralysis soon proved fatal. The body lay in state, and the funeral

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<sup>3</sup> Elected on joint ballot on January 14, 1864. Vote stood: Hicks, 67; Samuel Hambleton, 18; T. A. Spence, 2; blanks, 4. *Journal of Senate of 1864*, p. 10.

<sup>4</sup> One of his legs had recently been amputated.

<sup>5</sup> *Congressional Globe*, 1863-64, part iv, 2970.

<sup>6</sup> January 25, 1864. *Congressional Globe*, 1863-64, part iv, 3263. Senator Saulsbury, of Delaware, retorted that the Democratic party would not have him, but Hicks expressed himself as being by no means convinced of this.

<sup>7</sup> As an instance of the change which came about in his views, Hicks had declared in a letter written on April 3, 1860: "When it comes to vote a Democrat or Abolition [ticket], I am disfranchised." (MS.)

oration was delivered in the Senate, the President of the United States and his cabinet, the Diplomatic Corps, members of Congress, officers of the Army and Navy, the Governor of Maryland, members of the City Council of Baltimore, attending. Hicks was buried in the Congressional burying ground, but was taken up and on March 3 sent to Baltimore. A committee from the City Council of that city met the body on its arrival, conveyed it to the Maryland Institute, where it again lay in state, and finally accompanied it to Dorchester, where the interment took place in a cemetery in Cambridge.



## CONCLUSION.

"I am content to await the just verdict of my fellow-citizens when peace and sober counsels, experience and calm reason shall enable them to approve without partiality and to condemn without prejudice."<sup>1</sup>

Such was the judgment Hicks asked of posterity. Probably no man in public life in Maryland has ever aroused such different feelings among his constituents. By some he was regarded as a villain and a traitor who had sold his state to Lincoln. During the stormy days from 1860 to 1865 his opponents sought every opportunity to denounce him. Even this bitterness of feeling did not stop with his death, and still is expressed at times by some of the survivors of that period. On the other hand, some will ascribe to him virtues and abilities of a transcendent character. Of course there have been many opinions held concerning Hicks which are not so radical as these, but on the whole he has never been rated properly.

He was not a great man—certainly not in the sense in which the term is generally used. But for the uniqueness of the position in which he was placed in 1860, there is little doubt, but that his name would be preserved simply as that of a man who was once Governor of Maryland, and while holding this office exhibited abilities of only a very moderate character. Near the close of his term as Governor strange and perplexing problems were forced upon him for solution. He was swept along by circumstances, and his views changed with these. Inconsistencies occurred in his course, yet it cannot be said that he at any

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<sup>1</sup> Message of Hicks to the Legislature. Documents of House of Delegates of 1861-62, Document A.

one time went back upon the main tenet of his belief, that is, that the Union should be preserved if possible. At any rate he himself would take no steps to aid in carrying Maryland into secession. Apparently, he gave in on April 19, and called the Legislature, but he declared afterwards that he had to yield a little then or lose everything.

At the beginning of the great contest, Hicks realized that the war about to break out would be frightful in its destruction of life and property. He knew little of the constitutional points involved in questions of secession, but he was convinced that the attempt on the part of Maryland to claim the right to separate from the Union would turn the state into an enormous battlefield. He was possessed with the idea which was so prevalent in other border states, especially in Kentucky, that is, that a state could remain in the Union and yet take no part in the war. When such a course was found to be impossible, and he was forced to choose between allying himself actively with the United States Government or the Confederacy, he chose eventually the former. His earlier course was characterized in turn by assumptions of neutrality, by feeble attempts at resistance, mild protests, proffers of assistance to the United States Government indirectly offered, a qualified support of the administration. Near the close of his career he was entirely in sympathy with all the plans of the Federal administration. Though the records of hundreds of public meetings which were held throughout the state at this period have been investigated, together with other data, yet it is impossible to come to any satisfactory conclusions as to the public sentiment in Maryland. In the first place, this sentiment was in a more or less chaotic condition and tended to change with bewildering rapidity. Strong pressure was brought to bear upon Hicks to call a session of the Legislature, yet his refusal to do so secured for him the complete endorsement of a very large number of his constituents. The course which would have been pursued by the Legislature, if it had been in session,

is, of course, only a field of speculation. It is, however, safe to say that Maryland would not have passed an act of secession as long as Virginia remained in the Union. This fact is clearly established from the records of the time; and, indeed, the geographical position of Maryland rendered such a course imperative. But in the great revulsion of feeling, which was especially pronounced in the border slave states, upon the outbreak of hostilities and the call for volunteers by Lincoln, it is possible that Maryland, like Virginia, would have been swept into secession. It is here that a definite statement can be made as to the influence of Hicks on Maryland's policy at this time. By his persistent refusal before April 19, to summon the Legislature in special session, he prevented the possibility of that body taking any steps looking towards secession. When the Legislature did meet, public opinion had changed in a measure; and, moreover, Maryland had been rendered largely helpless by the course of the Federal administration.



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